

**Implementation of  
the Istanbul  
Convention in Italy.  
Shadow Report of  
women's NGOs.**

**October 2018**

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## INTRODUCTION

This report, entitled "*Implementation of the in Italy: Report of Women's NGOs*" (hereinafter referred to as the Report), is the result of work undertaken by women's and professional associations that have come together to examine the status of the implementation of the Council of Europe Convention on preventing and combating violence against women (hereinafter referred to as I.C.). It also explores in more depth issues concerning the nature and extent of domestic violence in Italy.

Over the years, the Italian government has paid increasingly more attention to the issue of violence against women and domestic violence but has done so almost exclusively through regulations and in particular through the criminalization of such acts. In 2007, acts of female genital mutilation (FGM) were criminalized, and in 2009, stalking was criminalized. In 2013, emergency procedures were used to enact several criminal regulations. That same year saw also the introduction of a national anti-violence plan and the important ratification of the I.C. (IC) by Italy. Since then, several other regulatory actions have been enacted to bring Italy more into compliance with the parameters of the Convention.

If, therefore, the official regulatory data and laws in Italy have experienced concrete developments, the same unfortunately cannot be said for everything that is needed to ensure the effective implementation of the regulations by the persons responsible to ensure that the women and children seeking support to escape the violence receive satisfactory responses. Indeed, along the way, women still encounter too many obstacles with the police and social welfare and healthcare professionals. This is due in part to poor preparation/training concerning the phenomenon of violence, but also to the Italian cultural substratum that is characterized by profound sexist stereotypes, gender inequalities, biases against women who report situations of violence and the persistent tendency to deny the credibility of women.

Italian politics is permeated by the same cultural matrix and, irrespective of "political leaning", has failed to send a strong message to the community that violence against women in any form is unacceptable. Nor has it strengthened the instruments that could be used to combat the violence that is perpetrated. The political system has not only failed the women who experience violence, but also the services that could support them, denying services the necessary funding and long-term economic projects required to do their work. The funds allocated to a serious and integrated national intervention programme that is effective for all regions in Italy are ridiculously inadequate, and this has led to a "leopard spot" effect throughout the nation. This situation has left a huge gap between the lofty goals inserted in the legislative framework and actual results in the community. It is easy and inexpensive to pass regulations, and it seems "reassuring" to focus particularly on the criminalization of actions without making a concrete commitment to the actions needed to create an effective context for combating violence.

This report has elected to emphasize, insofar as possible, the non-criminal aspects of the IC, and to highlight the myriad other problems that hinder proper application of the Convention in Italy. First of all, and as a common thread through the individual themes, there is the problem of the sexist and misogynist culture of Italian society at all levels and the lack of education in the schools. Secondly, there is the nature and delivery of professional training in all areas, which fails to go beyond the stereotypical views of male-female roles. Furthermore, there is a serious lack of secure funds allocated for shelters and anti-violence centres, and a lack of accountability for these, as well as the patchy and inadequate nature of data requested and collected. There exist various problems with criminal laws, criminal procedures and more generally concerning guaranteed access to justice for women victims of violence. In civil law there is an increasingly devastating interpretation of regulations relating to child custody in cases of violence. There are also problems specific to migrant women. All of these are topics that require cultural and economic investment, not merely criminalization.

The Report has repeatedly underlined how the Italian society is characterized by deeply rooted gender stereotypes and widespread sexism, both explicit and implicit, and proposes that the real

challenge lies in the ability to affect this cultural mind-set. Challenging and altering this mind-set are the only ways to effect genuine change.

In this sense, the role of women's associations, as asserted in this Report, must be recognized, accepted and strengthened, not only for the value and support they provide to the women affected, but as a crucial tool in the fight against male violence against women.

Finally, an important methodological aspect should be pointed out. This Report has analysed current data and has not in any way limited itself to the former period of reference indicated by the questionnaire sent to the government. It was decided to provide as current a picture as possible in order to verify the effectiveness of the regulations already in place

The updating of this Report is and will be absolutely necessary, given the political context that is emerging at the time of its delivery, and characterized by a government that, since the signing of the agreements prior to its formation and in its first months, has given scant attention to the issues covered by the IC (which are cited only in relation to requests for harsher penalties and proposals for family law reforms that are really preoccupying), as well as presenting themselves generally as reactionary with regard to the rights and freedoms of women. As a matter of fact, the newly installed Government, in addition to having minimal female representation, has eliminated the Ministry for Equal Opportunities, and has created a Ministry for Family Affairs and People with Disabilities (headed by a minister who is openly against abortion and with a very reactionary stance on the rights of LGBT people). This has effectively eliminated any position/office specifically addressed to women and, for the first time in Italy's political history, has delegated responsibility for equal opportunities to a man whose expertise is drawn from having been the President of UNICEF Italy. This implies, not for the first time, that minors, disabled people and women can be viewed, from a political perspective, as a generic group.

Unfortunately, there is a policy and service vacuum concerning the condition of teenage girls and women with disabilities. Generally speaking, gender is not taken into account in analyses concerning disabilities. This gender irrelevance is the cause and also the effect of an absence of information to help explore and analyse the influence that gender has on women with disabilities. These factors have contributed to a lack of interest by governments concerning the specific needs of girls and women with disabilities. It has also led to a shortfall in analyses and observations, in planning measures and practices to be adopted, and in drafting policy guidelines and specific measures concerning every area of their lives.

The first legislative measures introduced by the new Italian government concerning issues directly relevant to the IC, including migration and family law, already demonstrate that women's rights in Italy are under threat, and are in stark contrast to those proposed by the IC. On 10 September 2018, the Justice Commission of the Senate presented draft Decree n 735, "*Norme in materia dCSMi affido condiviso, mantenimento diretto e garanzia di bigenitorialità*"<sup>1</sup>. The first signatory of the Decree was Senator Simone Pillon, and the decree has now become known as the "Pillon Decree" (the Decree). The Decree aims to introduce provisions that would represent a serious regression for women's rights. The Decree not only fails to consider domestic violence against women and children, but also hinders its exposure by introducing compulsory mediation, the parental syndrome, direct maintenance, a complex system of agreement between parents concerning children's expenses, sanctions for women whose claims and lawsuits do not result in a conviction and modifications to the criminal law punishing domestic violence. The provisions would fuel gender inequality and gender-based discrimination and deprive survivors of domestic violence from important protections.

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<sup>1</sup> <http://www.senato.it/service/PDF/PDFServer/BGT/01071882.pdf>

Several women's NGOs, NGOs protecting the rights of children and judges and lawyers' associations have raised serious concerns about the Decree<sup>2</sup>. The UN Special Rapporteur on violence against women and the Chair Rapporteur of the UN Working Group on the Violence Against Women in Law and Practice asked the Italian Government on 22 October 2018 to respond within 60 days to her concerns about the Decree, including her concerns about the risk of putting an end to women's services and spaces that provide help to survivors of gender violence<sup>3</sup>.

In relation to migration law, the Law Decree concerning modifications to migration laws, international protection and the concession and withdrawal of Italian citizenship, known as the Salvini Decree, which has been in force since 5 October 2018, signals a significant regression in the protection of asylum seekers in general, and particularly women victims of gender violence. It is the responsibility of all the associations and professionals who participated in the drafting of this Report to remain extremely vigilant to ensure the effective implementation of the IC in its broadest sense.

## CHAPTER II – INTEGRATED POLICIES AND DATA COLLECTION

### *Article 7 – Comprehensive and co-ordinated policies*

### *Article 8 – Financial resources*

### *Article 9 – Non-governmental organisations and civil society*

#### THE ITALIAN SITUATION AND CRITICAL ISSUES

Over the years, the Italian Government has produced three National Action Plans. The first, in 2011, was the "National Plan Against Gender-Based Violence and Stalking". The second plan<sup>4</sup>, produced in 2014, was the "Extraordinary Plan of Action against Sexual and Gender Violence<sup>5</sup> 2015-2017", and the third is the "National Strategic Plan to Combat Men's Violence Against Women 2017 – 2020". Both the first and second<sup>6</sup> plans were strongly criticised by anti-violence centres, women's associations involved in the fight against men's violence against women, and civil society in general<sup>7</sup>. The fundamental characteristic of the first "extraordinary" Plan was precisely its emergency approach, rather than that of a structural intervention<sup>8</sup>.

In the years between the first and second plans, the Government had initiated a process of discussion and exchange with women's associations and civil society. Their suggestions and indications were not, however, added to the second Action Plan, not even to the minimum extent<sup>9</sup>. The role of Anti-violence Centres was in fact weakened in all of the 2015/2017 Plan's

<sup>2</sup> <https://www.change.org/p/il-ddl-pillon-su-separazione-e-affido-va-ritirato-giuseppeconteit-luigidimaio-alfonsofonafede-matteosalvinimi>

<sup>3</sup> [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WG/Communications/OL\\_ITA\\_5\\_2018.pdf&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WG/Communications/OL_ITA_5_2018.pdf&action=default&DefaultItemOpen=1)

<sup>4</sup> Law-decree no. 93 of 14th August, 2013, converted into law no. 119/2013 (hereinafter, L. 119/2013)

<sup>5</sup> *Extraordinary action plan against sexual and gender-based violence* adopted by Decree of the President of the Council of Ministers on 7<sup>th</sup> July 2015

<sup>6</sup> Article 5 of L. 119/2013, adopted by Decree of the President of the Council of Ministers on 7<sup>th</sup> July, 2015 and registered by the Court of Accounts on 25<sup>th</sup> August, 2015

[http://www.pariopportunita.gov.it/images/piano\\_contro\\_violenzasessualeedigenere\\_2015.pdf](http://www.pariopportunita.gov.it/images/piano_contro_violenzasessualeedigenere_2015.pdf)

<sup>7</sup> <http://www.direcontrolavioleza.it/piano-straordinario-contro-la-violenza-sessuale-e-di-genere-persa-unoccasione-storica/>; <http://www.zeroviolenza.it/temi/violenzadonne/item/70921-violenza-di-genere-arriva-il-piano-d%E2%80%99azione-la-rabbia-delle-associazioni-%C3%A8-inutile>; <http://www.internazionale.it/opinione/leamelandri/2015/06/12/piano-violenza-sessuale>

<sup>8</sup> <http://www.spaziosociale.it/public/allegati/CSAA0089.pdf>

<sup>9</sup> D.i.Re - *Work in progress: Action Plan Governance*, September 2017: Document describing point by point how D.i.Re Association identifies in a multi-level governance, foreseeing the active presence of women's NGOs and civil society



actions<sup>10</sup> and no global and coordinated policies on violence against women were implemented. The plan failed to capitalise on the different experiences gained over the last 20 years by those women's NGOs that had created Anti-violence Centres and shelters. Nor was their role recognised in the implementation of the global government policies provided by Article 7 (Explanatory Report, points 66 and 69). The actions provided in the second Plan were perceived by those services as generic and unpractical and had been included in the governmental and legislative policy logic based on interventions in the emergency phase, which focused almost exclusively on protective actions.

It is only with the development of the 2017-2020 Strategic Plan<sup>11</sup> (so-called Third Plan) that a programme has been envisaged to provide for structural and long-term changes, aiming at a cultural change that is relative to violence against women. Cultural change is urgently required in Italy. Unfortunately, no funds have yet been provided for or allocated to its implementation, and this is a critical and worrying issue.

The third Plan moves around the 4 Ps of the IC. The plan contains an approach that puts women's needs first, but in the description of the actions, fails to indicate the commitments that must be made by the public bodies involved (Ministries or Regions) in terms of human and economic resources. These are the bodies that should implement the measures identified as priorities. The plan provides a monitoring and evaluation mechanism for the first time. It does not make adequate reference to the specialised services managed by women's associations in the description of the measures adopted, identifying them as merely complementary to state interventions and intended to intervene in emergencies without a key role for prevention actions or general service operators training.

Further, the Third Plan separates the general planning level from the technical aspects and the network work at local levels. It also excludes the NGOs from the regional or national decision-making and programming areas, despite the fact that the local Anti-violence Networks are now active throughout the national territory in their promotion of a gender equality approach, as well as providing training, undertaking data collection and ensuring the protection and support of women and children on their paths out of violence.

In particular, and in relation to the three levels of governance (national, regional, local), it should be noted that contrary to what is laid down in the preamble of the Plan on the principles of collaboration and subsidiarity constitutionally guaranteed, and on integration between the public and private sectors, the direction of interventions, both at central and regional levels, remains entirely institutional. The *de facto* exclusion of Anti-violence Centres from the decision and evaluation making centres in respect of the policies and measures implemented entails the concrete risk of exclusion and/or marginalisation of the NGOs of women who manage specialised services (Anti-violence Centres and shelters) and who focus on the importance of women's self-determination in their decision-making choices and autonomy.

Even the mapping of the different entities and the specialized female support services for women victims of violence, related to the public utility number 1522 and available on the website of the Department for Equal Opportunities of the Presidency of the Council of Ministers (hereinafter DEO), is absolutely generic and does not correspond to the criteria provided by IC (see insight in the comments on Articles 22-23).

With respect to the provisions of article 8, it should be noted that the shortcomings and fragility of the actions provided for in recent years by the different instruments (2015-2017 Plan and the new 2017-2020 Plan) can be ascribed to the scarcity of available resources and the lack of clear criteria for their distribution, as well as to a failure to check on quality and compliance with the requirements of IC by the financed services.

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at every level since they are primary interlocutors to define policies, programs and actions to be developed to prevent and fight violence against women..

<sup>10</sup> file:///Intesa-CU-Requisiti-minimi-centri-antiviolenza-e-case-rifugio-GU-40-180215.pdf

<sup>11</sup> *National Strategic Plan to Combat Men's Violence Against Women 2017 - 2020* approved in November 2017 by the Unified Conference

The aforesaid lack of criteria for identifying specialist services and the fact that the majority of resources are distributed over the territory through local authorities (Regions) without any predetermined or binding criteria, leads to a non-transparent policy, which is strongly inconsistent in the allocation of resources at regional level.

The National Association named D.i.Re "Network of Women Against Violence" (hereinafter referred to as D.i.Re) has produced two documents<sup>12</sup> providing an evaluation of the impact of the resources made available by the National Action Plan and supplied to Regions by the DEO<sup>13</sup> *to enhance and improve support to women victims of violence and their daughters/sons, standardising the availability of services (in particular Anti-violence centres and shelters) in the national territory, and strengthening the network of territorial services.*

These monitoring actions show that, while there has been a certain transparency and consistency with the objectives of the Action Plans as regards the resources used at national level, many Regions have used the resources allocated to them (either directly or by delegating local authorities) as follows:

- Failing to select, from among the many "improvised" operators on gender-based violence, those who guarantee specialist support services in accordance with the principles of IC, using a clear gender-based approach in spending, and failing to monitor them;
- Not creating guidelines for public agencies involved in violence, nor mandatory or standardised training for the staff of these agencies;
- Without providing mechanisms and instruments for the continuity of services for victims and by settling the amounts with long delays, with additional expenditure for those who managed the interventions;
- In the absence of a participatory comparison tool for the programming of expenditure.

The financial resources devoted to these policies do not achieve the desired support outcomes of the work of women's NGOs that have been active for years in preventing and combating violence against women. It is unthinkable that the allocation of just a few thousand euros per year for each "service"<sup>14</sup>, without any guarantee of continuity in time, can be expected to meet the demand for help which is multiplying over the years, due both to the large number of women who benefit from the support given by centres and homes and the need to avail these services to more and more women and girls who could benefit from this support.

It is clear that the harmonization of regional regulations and the implementation of the Plans at local levels have not been based on clear principles derived from IC, under which policy coordination is required to provide an effective holistic and comprehensive response, and one which focuses on victims' human rights. The consequences are therefore uneven, there are discriminatory applications of the Plans in the national territory, there is a serious inability to spend or to select people to whom resources should be assigned at regional level, and, last but not least, there is no guarantee of continuity of measures and services for women.

#### **STATE-REGION RELATIONS - The Lombardy case**

As mentioned above, the funding sent by the State to the Regions has not been clearly established and is not bound to definite parameters, which in fact involves devolving political choices to the Regions regarding the type of intervention on gender-based and domestic violence.

<sup>12</sup> <http://www.direcontrolaviolenza.it/?s=notazioni+ragionate>

<sup>13</sup> Allocation of resources relating to the 2013-2014 «Fund for policies concerning rights and equal opportunities» referred to in Article 5, paragraph 2, of Law-decree no. 93 of 2013 - Decree of the President of the Council of Ministers of 24<sup>th</sup> July, 2014

<sup>14</sup>Resolution no. 9/2016/G of 5 September 2016 of the Court of Auditors, which analyses the availability and use of funds, expressing the consideration that, on average, € 5,862.28 was allocated to each Centre, and € 6,720.18 to each House, and indicating how to improve a system that is not functional to strengthening support for women victims of violence.

The example of the Lombardy Region is emblematic. The choice of Lombardy Region, in its intervention relating to violence against women, has been to the advantage of public bodies, since it imposed inter-institutional networks in the region, through which it mainly grants refunds for the services provided by professionals: psychologists, doctors, psychiatrists, lawyers, etc., and effectively deprived the role of non-governmental organizations, used as a mere service on the territory and compelled to a management that is stereotyped and not respectful of the "welcoming methodology", even if the latter has been identified as a distinctive element of anti-violence centres in the State-Regions agreement (27/11/2014).

This has led to the imposition, for example, of data collection according to hospital medical principles (fiscal code and history), which are part of the form that must be filled in completely. In this way, there is no consideration for anonymity and secrecy, which are, though, fundamental elements in the work of anti-violence centres, and no respect for the stories that women bring to these areas rather than to public ones.

Another imposition is related to the organisation of the work of anti-violence centres in which funding is provided only to those professionals recognised by the Lombardy Region. In this way, the welcoming consultant profile, an essential and qualifying element of the work methodology, is not even considered, except indirectly through a degree certificate in the typical professional disciplines mentioned above.

Funding is granted through political-institutional administrative bodies with which protocols must be previously signed and to which, in the event of disagreements linked to purely political-electoral issues, a Centre could be excluded, to the serious detriment of women.

Finally, always taking as an example the policies of the Lombardy Region, the free interpretation of the elements indicated in the State-Regions Conference, to recognize and qualify the activities of the anti-violence centres, lets this Region try to impose a first aid job, 24 hours, paid € 26.00 per day [!] for the availability, even at night, of a Centre operator. This parameter leads to three consequences: it impedes the two-people mode of work normally adopted by anti-violence centres, which is an important element of recognition of the strength of the relationship between women, it asks the person involved for availability at times and in ways which are absolutely extraordinary, outside the boundaries set by labour law rules and principles, and it exposes to risk the welcoming consultant who would be expected to move, alone, at night time, to reach out to people in emergency situations.

In relation to the principles affirmed by the IC, it should be added that in Italy a non-institutional movement inspired by feminism (named *Nonunadimeno*) and established in the autumn of 2015, has taken on board the demands of the IC in a national document, along with the requests made by the Italian anti-violence centres regarding the need to adopt gender policies suitable for achieving equal opportunities in order to eradicate violence against women.<sup>15</sup> The document addresses all the "painful" issues in Italian policies concerning women (work, wage differential, maternity and reproductive health, care services and childcare, education, prevention and stereotypes, etc.) that the Government Plan has not focused on adequately, and reminds authorities that the lack of effective policies to bridge the gap between men and women, which is still strong in Italy at all levels, does not facilitate the construction of paths of autonomy for women victims of violence.

Generally speaking, it is worth underscoring the fact that the Italian legal system does not set out any specific regulations for protecting women and girls with disabilities. As a result, the laws governing equal opportunities and equal gender treatment for both men and women are applied, along with specific regulations for disabilities. This means that there are no regulations, policies, measures or actions geared towards promoting gender equality, nor do they include specific reference to girls and women with disabilities. A gender perspective is not adopted when developing and applying standards, measures and programmes for the disabled.

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<sup>15</sup> *We have a plan: feminist plan against men's violence against women and gender-based violence* – 25<sup>th</sup> November 2017

As regards the phenomenon of violence, no specific reference is made to women with disabilities in Law no. 66 1996 “Rules against sexual violence”, and instead a merely generic increase in sentences handed down for violence against disabled persons regardless of gender. There is a complete absence of any reference to women with disabilities in the “Extraordinary action plan against sexual and gender-related violence” DPCM 7 July 2015.

In the Strategic Plan 2017-2020, praiseworthy attention is finally dedicated specifically to the situation of migrant, refugee and asylum-seeker women, whilst women with disabilities are relegated to a generic mention of the “*Persistent phenomena which should prompt reflection and specific measures, such as the exposure to violence of vulnerable groups (young women, disabled women). . . . .*”, which is not sufficient to ensure measures to protect these women are fostered.

Whilst the activity Reports in issue 1522 provide figures regarding disabilities in victims of violence, they are cited as figures from a *phenomenon which is never sufficiently reported in analyses and monitoring. Yet the phenomenon is a widespread one which goes relatively unpunished, and only rarely receives the attention it should*<sup>16</sup>.

The same final Report of the “*Parliamentary inquiry commission into femicide, and all gender-related forms of violence*”<sup>17</sup> records the scant attention paid to the situation of girls and women with disabilities, owing to the impossibility of exploring the phenomenon in relation to this group of women. It acknowledges that it is a critical problem and includes a section<sup>18</sup> that reads as follows:

*In consideration of the points that arose whilst examining the issue of violence to which women with disabilities are subjected, and to which part of paragraph 2.2 of Chapter 2 has been dedicated, the Commission deems it essential for the statistical records concerning the phenomenon of gender violence to specifically highlight and gather data concerning this form of violence, the prevention of which should also involve appropriate measures in plans for counteracting gender violence.*

## **2011 RECOMMENDATIONS CEDAW COMMITTEE**

17. *The Committee reiterates its recommendation that the State party ensure, through effective coordination and monitoring structures and mechanisms, the effective and consistent application of the Convention by all regional and local authorities so that uniformity of results in the implementation of the Convention is achieved throughout the State party’s territory.*

19. *The Committee recommends that the State party:*

- (a) ensure that gender mainstreaming is consistently applied with in formulation and implementation of all laws, regulations and programs in all ministries and decentralized government structures;*
- (b) ensure sufficient and sustainable resources from the State budget for the work of the Ministry for Equal Opportunities and the Department for Equal Opportunities specifically aimed towards achieving gender equality;*
- (c) establish transparent and regular consultations, both through formal and informal links with NGOs, in particular women’s associations and women’s human rights defenders, in order to promote a participatory and constructive dialogue with them in the pursuit of gender equality.*

## **2017 RECOMMENDATIONS CEDAW COMMITTEE**

12. *The Committee recommends that the State party:*

- (a) Enhance women’s awareness of their rights under the Convention and the remedies available to them to claim violations of such rights, and ensure that information on the Convention, the Optional Protocol and the Committee’s general recommendations is provided to all women, targeting in particular women belonging to disadvantaged groups, including women from rural areas, women migrants, asylum seekers and refugees, Roma, Sinti and Caminanti women and women with disabilities.*

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<sup>16</sup> <http://www.pariopportunita.gov.it/media/3287/relazione-secondo-semester-1522.pdf> pages 25 and 26

<sup>17</sup> <https://www.senato.it/4731>

<sup>18</sup> 10.6 Violence against women with disabilities page 178

14. *The Committee recommends that the State party establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory.*

22. *The Committee recommends that the State party:*

*(a) Increase the resources allocated to the Department for Equal Opportunities to ensure that a clear focus on women's rights is maintained and consider re-establishing the Ministry for Equal Opportunities as a high-level mechanism capable of initiating, coordinating and implementing gender equality policies;*

*(b) Expedite the adoption and effective implementation of a national gender policy and ensure that gender mainstreaming is consistently applied in the formulation and implementation of all laws, regulations and programmes in all ministries and decentralized government structures;*

*(c) Strengthen coordination between the various components of the national machinery by clearly defining their mandates and responsibilities in relation to women's rights, conduct regular monitoring and evaluation of such coordination and ensure that the national machinery is represented at the regional and local levels;*

28. *Recalling the provisions of the Convention and its general recommendations No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:*

*(a) Expedite the adoption of a comprehensive law to prevent, combat and punish all forms of violence against women, as well as of the new national action plan against gender-based violence, and ensure that adequate human, technical and financial resources are allocated for their systematic and effective implementation, monitoring and assessment;*

*(c) Encourage women to report incidents of domestic and sexual violence to law enforcement bodies by destigmatizing victims, sensitizing the police and the judiciary and raising awareness about the criminal nature of such acts and ensure that women have effective access to civil courts to obtain restraining orders against abusive partners;*

*(f) Reinforce the protection and assistance provided to women who are victims of violence, including by strengthening the capacity of shelters and ensuring that they meet the needs of victims and cover the entire territory of the State party, allocating adequate human, technical and financial resources and enhancing State cooperation with non-governmental organizations providing shelter and rehabilitation to victims;*

44. *(a) Conduct a systematic assessment of the impact of such laws and policies on the lives of women and their families;*

*(c) Closely monitor the national social security programme and ensure that it is implemented in a gender-sensitive manner.*

47. *The Committee welcomes the adoption of the national disability action plan and Legislative Decree No. 66/2017 to promote school inclusion for students with disabilities, as well as the establishment of an information centre on persons with disabilities. The Committee is concerned, however, about:*

*(a) The discrimination faced by women and girls with disabilities in gaining access to education, employment and health care, and their exclusion from public and social life and from decision-making processes;*

*(b) The very low and often not implemented quotas to promote the inclusion of persons with disabilities in the open labour market;*

*(c) The gendered consequences of the current policies whereby women are "forced" to remain at home as caregivers for their family members with disabilities instead of being employed in the labour market;*

*(d) The fact that women with disabilities face a situation of economic dependency, which puts them at risk of situations of violence.*

48. *The Committee recommends that the State party:*

*(a) Adopt targeted measures to promote the access of women with disabilities to inclusive education, the open labour market, health care, including sexual and reproductive health and rights, public and social life and decision-making processes;*

*(b) Increase and effectively implement quotas in public and private companies to promote the inclusion of persons with disabilities, in particular women with disabilities, in the open labour market;*

- (c) Increase budgetary support to enable women with disabilities to live independently throughout the country and have equal access to services, including personal assistance;
- (d) Implement awareness-raising campaigns and provide capacity-building for State officials on the rights and special needs of women and girls with disabilities.

## **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

78. *Women with disabilities were, for a long time, seen as passive recipients of assistance. The State, society and even family members perceived disabled women as invisible at best, a burden at worst. Girls and women with disabilities tend to be less educated due to the stereotypical opinion that considers them as dependent and in need of care. Educating them is therefore considered not only difficult but unnecessary. This perception has at times led to an inferior quality of education and, consequently, employment in subordinate roles despite existing legislative and policy frameworks for the integration of people with disabilities.*

85. [...] *The 2006 ISTAT survey Violence against women inside and outside family is the most recent official source of data and its limitation includes the fact that it does not accurately reflect the actual prevalence of violence against women and does not include data on women with disabilities, women from the Sinti, Roma or other minority communities.*

87. *The institutional framework for addressing women's rights includes a number of governmental bodies and institutions, both in the capital and at the regional levels, which have similar mandates and functions. The coordination between these bodies poses challenges, including in terms of human and financial resources, duplication and competition.*

88. *The non-disbursement of such funds to associations for activities in the area of women's rights is leading to the closure of these associations. Factors contributing to the inability of the Central Government to intervene in such cases include decentralization of the institutional framework as provided by the Constitution, the challenges of dealing with a lack of political will at the local level and procedures that may hinder the capacity to manage and spend the funds received. This then affects the responsibility of the Central Government to fulfil, with due diligence, its international and national obligations to effectively address violence against women.*

90. *According to DIRE, challenges facing anti-violence shelters include: inadequate or no commonly agreed standards on the specialized roles of service providers; management and accountability of organizations; the effective role of shelters in preventing and countering violence; the absence and/or inconsistency in obtaining Government funds for creating new and maintaining existing anti-violence shelters; and the fact that support services are only reaching a limited number of women victims of violence.*

94. *The Government should:*

- (a) *Put in place a single dedicated governmental structure to deal exclusively with the issue of substantive gender equality broadly and violence against women in particular, to overcome duplication and lack of coordination;*
- (b) *Expedite the creation of an independent national human rights institution with a section dedicated to women's rights;*
- (c) *Adopt a specific law on violence against women to address the current fragmentation which is occurring in practice due to the interpretation and implementation of the civil, criminal and procedures codes.*

## **2016 RECOMMENDATIONS UN CRPD COMMITTEE**

14. *The Committee recommends that gender is mainstreamed in disability policies and disability is mainstreamed in gender policies, both in close consultation with women and girls with disabilities and their representative organizations. The Committee recommends that the State party take into account article 6 of the Convention and the Committee's General Comment no. 3 while implementing Sustainable Development Goal 5, targets 5,1, 5.2 and 5.5*

## **RECOMMENDATIONS**

1. There is an urgent need for action to improve coordination and coherence between national and regional interventions, including the involvement of women's associations that provide specialist services, with adequate and stable human, technical and financial resources allocated

over time for the systematic and effective implementation of actions, monitoring and evaluation of their impact.

2. Priority must be given to ensuring information transparency and verifying service standards, favouring those managed by NGOs of women with many years of experience and expertise, avoiding "rash" distribution of available resources to operators who are not aligned with Ist. Convention principles.

## *Article 10 – Co-ordinating body*

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

In Italy, there are no official government bodies entrusted with the specific assignment of coordinating, implementing, monitoring, and evaluating policies and measures to prevent and combat all forms of violence covered by the Convention.

The 2015-2017 Plan<sup>19</sup> did not foresee such bodies nor provide any monitoring or scientific evaluation of the policies and measures adopted to prevent and combat all forms of violence against women. Not even an impact assessment of the measures was performed, as highlighted in the preamble of the 2017-2020 Plan.

In addition, no collection of administrative data was made. In Italy some regions (e.g., Emilia Romagna<sup>20</sup>, Tuscany<sup>21</sup>, Molise<sup>22</sup>, Alto Adige, etc.) have made the experience of monitoring centres who work in complete autonomy and using different indicators in their surveys. These monitoring centres have been established by implementing regional laws and do not answer to any request for national coordination.

The National Monitoring Centre, launched on the basis of the 2015-2017 Plan and coordinated by the DEO, has so far responded only to a need for stocktaking in the dialogue between Ministries and NGOs. Following the great mobilization of anti-violence centres and women's associations on 25 November 2016, the DEO signed a memorandum of understanding with ISTAT<sup>23</sup> for a period of two years, with the aim of developing and implementing an information system called "*Data bank on gender-based violence*" which aimed at providing validated and continuous statistics to government bodies and all public and private agencies involved in the fight against gender-based violence.

In particular, we recommend that the hoped-for creation of a coordination body will also make it obligatory to gather unbundled data on gender violence based on disability.

### **RECOMMENDATION**

1. There is a need to establish a permanent and independent body to carry out the specific tasks of coordination, implementation, monitoring, and scientific evaluation of policies and measures to prevent and combat all forms of violence covered by the Convention.

## *Article 11 – Data collection and research*

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

<sup>19</sup> <http://www.pariopportunita.gov.it/wp-content/uploads/2018/01/Piano-violenza-2015-2017.pdf>

<sup>20</sup> <http://parita.regione.emilia-romagna.it/entra-in-regione/osservatorio-regionale-contro-la-violenza-sulle-donne>

<sup>21</sup> [http://www.regione.toscana.it/-/nono-rapporto-sulla-violenza-di-genere-in-toscana-anno-2017?redirect=http%3A%2F%2Fwww.regione.toscana.it%2Fosservatoriosocialeregionale%3Bjsessionid%3D16D64397A866AD9428B4D232440762F1.web-rt-as01-p2%3Fp\\_p\\_id%3D101\\_INSTANCE\\_c8Z8dsp5bGrB%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3D\\_118\\_INSTANCE\\_3dGXcweuxwFq\\_\\_column-1%26p\\_p\\_col\\_count%3D1](http://www.regione.toscana.it/-/nono-rapporto-sulla-violenza-di-genere-in-toscana-anno-2017?redirect=http%3A%2F%2Fwww.regione.toscana.it%2Fosservatoriosocialeregionale%3Bjsessionid%3D16D64397A866AD9428B4D232440762F1.web-rt-as01-p2%3Fp_p_id%3D101_INSTANCE_c8Z8dsp5bGrB%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3D_118_INSTANCE_3dGXcweuxwFq__column-1%26p_p_col_count%3D1)

<sup>22</sup> <https://www.informamolise.com/campobasso/osservatorio-sulla-violenza-genere-nella-regione-molise-punto-della-situazione/>

<sup>23</sup> <http://www.pariopportunita.gov.it/wp-content/uploads/2018/01/protocollo-intesa-con-istat.pdf>

In Italy there is no disaggregated and coordinated data collection system. The surveys performed by the National Government on violence against women involved two epidemiological researches on the phenomenon, one in 2006 and the latest in 2014.<sup>24</sup>

There is no national survey system regarding the women who, because of situations of violence, turn for support to health services (general practitioner, counselling, first aid, hospitals, specialist medicine, DSM, SERT, etc.) and social services (public and private ones). Even in instances where a monitoring centre on violence against women is provided by regional laws or protocols, the data collected does not consider the gender and/or the relationship between the perpetrator and the victim<sup>25</sup>. An exception is made on rare occasions. Other essential data should be collected, including the number and type of victims involved in the violence (e.g. the children of the victim or her family members), the number of perpetrators (accomplices in the crime), the number of crimes committed in the dynamics of the violent act (crime combination and complex crime) as well as the type of violence exercised (economic, psychological, FGM). The disability of the violence victim, and her relation with the perpetrator or perpetrators of the violence, and the specific forms of violence against women with disabilities, such as forced sterilisation, which still appears to be practised in Italy as a form of “Protection”, should also be collected. Forced sterilisation is often requested by family members, but no figures are available, not least owing to the reticence of those practising it and the fact that surgery is camouflaged with other medical justifications (endoscopies, biopsies, etc.). This is necessary to ensure integrated reporting is provided to the information systems of social services.<sup>26</sup>

In any case, there is no homogenous data collection system throughout Italy. Even sources obtained from the police or judicial proceedings, either criminal or civil law, are incomplete. In reference to judicial data, neither protection orders issued by civil tribunals nor administrative measures (such as chief of police warnings) are considered. Further, it would be necessary to investigate trial outcomes, ordered sentences, compensations ordered, adopted security measures adopted, etc., and to identify a range of crimes which, due to their frequency, are more related to gender-based violence against women. The number of dismissed cases regarding violence-related crimes is also important.

It should be said that Italian legislation does not provide for crimes relating specifically to gender-based violence against women. For example, the crime of abuse does not provide for separate types of prosecution by physical/psychological/economic violence, and also includes non-gender-based violence and violence that takes place in the fields of work and school sports. Similarly, stalking includes, for example, harassment within an apartment building, whilst sexual harassment in the workplace is not contemplated. Consequently, it is not possible to refer only to the type of crime in order to identify cases of violence against women.

In the SDI database of the Police Forces (Investigation System), fundamental information is not provided, not even the relation between the perpetrator and the victim. In the SICP (Italian acronym for Criminal Investigation Information System), the indication relative to the genders of the offender and of the victim is not required, even if it is available. Even more problematic is the lack of ability to identify the sphere in which the crime took place and the relationship between the victim and the perpetrator, such as in the case of injuries and beatings.

ISTAT epistemological investigations have not categorized femicide. The data released on femicide by the Ministry of Interior refer to all women killed and, therefore, no comprehensive definition of femicide is being used that can be applied to qualify the data by its contents. Even

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<sup>24</sup> [www.istat.it/it/archivio/161716](http://www.istat.it/it/archivio/161716)

<sup>25</sup> See data of Tuscany Monitoring Centre. The collection of data from First Aid services is not exhaustive, since the gender of those who suffered violence may not even be recorded. Unlike the case of the Inter-institutional Table against Violence against Women in Reggio Emilia, where members of the Table are required to provide data broken down by gender, nationality, age, victim/perpetrator relationship, presence of children.

<sup>26</sup> The Information System on Social Services, so-called Assistance Record, which is a part of the Social Services Information System (SISS)



the recent research carried out by the Ministry of Justice<sup>27</sup> on the sentences issued is not exhaustive because it has not analysed in depth the dynamics that contributed to the killing. Moreover, in instances of femicide where the perpetrator commits suicide, these dynamics are not considered, because if the perpetrator commits suicide, no trial is held. The data on convictions are not accompanied by any data on the recidivism of the perpetrators (referring to previous offences) nor to the extent of the penalty actually served. On the one hand, a woman's murder may be confusingly considered as femicide, in its broadest sense. On the other hand, the word femicide is used only for crimes that took place within the family (e.g., Eures).

In the Commission's report on femicide,<sup>28</sup> many data are noted, including detailed data on crimes linked to gender-based violence from prosecution offices, courts, and appellate courts. The data were aggregated and not analysed by calendar year. Data from the Juvenile Court are missing. A survey of this kind needs to be repeated annually, not only when a parliamentary committee of inquiry is established. In respect to femicide, we should start from an appropriate and shared definition, which also analyses related sentences, convictions, and the dynamics that led to the crime, highlighting institutional responsibilities in cases where the woman or her environment had given signs of risk. There is also insufficient institutional attention in the study of orphans of women victims of femicide<sup>29</sup>.

At a non-institutional level, the only survey on women victims of violence received by anti-violence centres is the annual survey conducted by the national association of anti-violence centres, D.i.Re<sup>30</sup> (Donne in Rete contro la violenza) concerning the women received by the 81 associations belonging to the network. These associations, which manage the anti-violence centres throughout Italy, are autonomous associations that respect the anonymity of the women, a factor that does not create obstacles during the data collection process.

The attempts made by some regions, including Lombardy, to include the operators of anti-violence centres among the professional categories subject to the obligation to report crimes that can be prosecuted *ex officio*<sup>31</sup>, were contested by the centres, and the method that makes the disbursement of funds conditional on the traceability of the women received was rejected because it is detrimental to the privacy and safety of the women.

With regard to the data relative to Centres, shelters, and sleeping accommodations, the DEO<sup>32</sup> has stated that there are 296 anti-violence centres and 258 shelters within the Italian territory, but in the published list, the criteria according to which the data were collected is not reported, and the number of beds available is not indicated (see more details in the comments to Articles 22-23). According to NGO sources,<sup>33</sup> the total number of anti-violence centres is 160, 79 of which have one or more shelter houses.

There are no data on measures, such as risk assessment, introduced as part of the National Plan.

There is no institutional investigation into the costs of violence against women in Italy.

The data on economic violence have not been collected. From a juridical standpoint, there is no specific crime. The crime of "Breach of the obligations of family assistance" is provided (article 570 of the Criminal Code) and was extended in 2018 to include a separated and/or divorced

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<sup>27</sup> Survey with statistical analysis on femicide in Italy, edited by Fabio Bartolomeo, Ministry of Justice - Directorate General for Statistics and Organizational Analysis, 2017.

[https://webstat.giustizia.it/Analisi%20e%20ricerche/Femminicidio%20in%20Italia%20-%20Inchiesta%20statistica%20\(2010%20al%202016\).pdf](https://webstat.giustizia.it/Analisi%20e%20ricerche/Femminicidio%20in%20Italia%20-%20Inchiesta%20statistica%20(2010%20al%202016).pdf)

<sup>28</sup> Parliamentary Committee of Inquiry into femicide and all forms of gender-based violence, <https://www.senato.it/4731>

<sup>29</sup> Orfani speciali: chi sono, dove sono, con chi sono: conseguenze psico-sociali su figlie e figli del femminicidio [meaning: Special orphans: who they are, where they are, with whom they are: psychosocial consequences on daughters and sons of femicide] / Anna Costanza Baldry, Milano, Angeli, 2017

<sup>30</sup> [www.direcontrolavioenza.it](http://www.direcontrolavioenza.it)

<sup>31</sup> Rally of 12/09/2017 in Lombardy, <http://www.glistatigenerali.com/milano/centri-antiviolenza-e-il-diritto-delle-donne-allanonimato/>

<sup>32</sup> Equal Opportunities Department, <http://www.pariopportunita.gov.it/faqs/aumenta-il-numero-dei-centri-antiviolenze-e-delle-case-rifugio/>

<sup>33</sup> [www.comecitrovi.it](http://www.comecitrovi.it)

spouse (article 570-*bis*), but no data are available relative to it. From the monitoring report of the Centres of the Emilia Romagna Region, it appears that 41.5% of women who turn to the Centres suffer economic violence (2016 data, as a percentage of the 2,555 women received)<sup>34</sup>. These data confirm the need to detect economic violence as well as psychological violence.

The Convention pays particular attention to the importance of data, stating that the data are an essential tool for designing social policies against gender-based violence, including FGM. However, the data must be of the highest quality, which implies that regular and scheduled data collections are required to ensure complete, disaggregated and standardized data collection processes that are capable of representing adequately and appropriately the phenomenon, and which are to be read according to a *gender sensitive interpretation*.

The current institutional sources related to health, legal and social services are not suitable to depict the phenomenon in its entirety. It is often the case that data collections fail to be made according to the gender of the perpetrator of the violence, and that no records are kept of the additional personal and individual characteristics of all those involved. Moreover, this type of data collection is rarely undertaken as part of a systematic and standardized process, particularly when compared to those based on non-institutional sources. There are several information gaps, including insufficient forms for data collection currently used by administrative sources, an absence of standardized survey systems that are coordinated and shared between all organizations, no certainty concerning the continuity of statistical collection, training of data collectors, and, therefore, no integrated information system. Further, no tools and resources have been allocated to enable the move from the current "data stacking" from multiple sources model to a contextualized knowledge-based tool.

The 2015-2017 Plan was a step in this direction and provided for a project to set up an integrated data collection and processing system. This system, ISTAT, began operations at the beginning of September 2018. The mapping of Anti-violence centres in the territory has been entrusted to the CNR and the collection of data involves the Regions in a coordinating role.

However, it should be noted that the collection method has not been made explicit and the implementation guidelines are missing. The Regions do not currently have the capacity to collect data respecting anonymity (see the example of the Lombardy Region in the comments to article 9) and it is not known how the regional Monitoring Centres are integrated with the national centre. The time criteria for data collection and the geographical areas, if possible, should be standardized.

In order to ensure improvements in the field of violence prevention, it is essential to find ways, while still respecting the anonymity of women, to effectively trace the path of the victim from the time she attempts to escape the violence situation. This means addressing the role of the institutions. There is currently no standardized system for this purpose (e.g. how many reports/lawsuits have been made by women, crimes and times, responses from the police<sup>35</sup>, coercive measures ordered by the police, interventions at home, times sent to local reception services, risk assessment performed and protection strategies already put in place). Access to this information would allow us to trace the woman's path out of violence and then highlight the "faults" and failures of institutions to respond appropriately. Finally, there is no systematic data collection concerning the warnings of the Chief of Police<sup>36</sup> regarding the requests and adoption of the measure, the violation and its consequences.

## **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*27. The Committee urges the State party to:*

*(d) enhance the system of appropriate data collection on all forms of violence against women, including domestic violence, protection measures, prosecutions and sentences imposed on perpetrators and conduct appropriate surveys to*

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<sup>34</sup> Data from the Anti-violence Centres of the Regional Coordination of Emilia Romagna Region. Monitoring Report, 1 January-31 December 2016, Bologna, 2017

<sup>35</sup> See EVA system, operational dashboard of police forces introduced and fine-tuned in 2017 to keep records of all squad car interventions even without previous report/complaint.

<sup>36</sup> The Sciascia database on warnings is left to an initiative of the University but is not taken as an institutional model.

*assess the prevalence of violence experienced by women belonging to disadvantaged groups, such as Roma and Sinti, migrant and older women and women with disabilities;*

#### **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*28. the Committee recommends that the State party:*

*(g) Collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator.*

#### **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

*85. The Special Rapporteur notes limitations in efforts of Government institutions and CSOs to collect disaggregated data and statistics related to violence against women, including femicides.*

*97. Lastly, the Government should:*

*(a) Strengthen the capacity of ISTAT, including through the provision of consistent funding, to establish a system for regular and standardized data collection and analysis, disaggregated by relevant characteristics in order to understand the magnitude, trends and patterns of violence against women;*

*(b) Ensure that in collecting such information, ISTAT regularly collaborates with institutions and organizations already working to collect data on violence against women - including the police, courts and civil society. The ultimate goal should be the harmonization of data collection guidelines and the use of such information by State and non-State actors, in an effective way.*

#### **RECOMMENDATIONS**

1. An integrated system of data collection, including judicial data must be set up urgently, bound by law to overcome the fragmentation and partiality of information and capable of generating structured flows of information usable at national and local level for the purposes of all institutional, political and social actors, also disaggregated by the different conditions, particularly considering situations of disability.
2. The survey on violence against women carried out every four years by ISTAT, is to be implemented as a priority, and financed appropriately. Attention is to be paid also to the local phenomena of violence, stereotypes, and to the vision relative to violence among the population and among operators. Priority should also be given to a detailed study of the phenomena of femicide and the problems of orphans of femicide.
3. It is necessary to integrate into the system the data collected by specialist support services (Anti-violence Centres and shelters and for FGM), starting from public mapping and monitoring thereof with precise and transparent criteria, taking into account that the information collected by them on the women they receive are to be kept strictly confidential so as to guarantee the anonymity of women, which is a characteristic of the methodology adopted by these services.

### **CHAPTER III – PREVENTION**

#### *Article 12 – General obligations*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Italian society remains permeated by deep-rooted sexism, notwithstanding CEDAW's repeated recommendations to address this situation. Gender stereotypes and bias and the traditional roles and stereotypes assigned to men and women are reproduced from the earliest educational experiences, and also in school texts, and are reflected in verbal messages and images in all types of media, and to the extent that they have become commonplace in everyday language. There has been no general and coordinated national programme aimed at countering the widespread acceptance of stereotypical gender roles, and even the planned intervention in the 2015-2017 Plan did not yield significant results.

This virulent and pernicious sexism is deeply embedded throughout Italian society, and there are no signs of change. People are obviously very accustomed to this situation. The unrelenting pervasiveness of sexism and gender bias in Italian society must be considered as well as the fact that in recent years nothing has been done to address this situation. Prescriptive rules are not enough to change a prejudice that is so deeply rooted. Sexism does not spare women with disabilities and in fact renders them victims twice over. Disabled women are not only viewed as “objects”, but being disabled renders them defective objects of no value<sup>37</sup>.

### **Sexism in Italian politics and the accusations against Asia Argento, the perception of the #metoo movement in Italy**

Since Berlusconi's rise, women have been represented primarily as the objects of sexual fantasies/desires, to be bought<sup>38</sup> or relegated to the typical role of stay-at-home wife<sup>39</sup>. This depiction is spread and reiterated by the media. Nothing changes with the entry of new political actors. Indeed, sexism and the stereotyped vision of women have entered the mainstream to the point of becoming a normal instrument of political discourse. The insult and the sexist and/or sexual offenses have reached new heights: Massimo De Rose (M5S): "*The women of the PD (Democratic Party) are here only because they are good at blowjobs*" (2013); Angelo Garbini, SEL, to "*defend*" former minister Kyenge whom Dolores Valandro (League) had wished that she be raped, declared "*She should be left in a cage with a bunch of blacks*"<sup>40</sup>.

The attacks come from across the entire political spectrum and concern women of all parties. Minister Maria Elena Boschi has been the subject of gossip campaigns of all kinds, photographed and analysed for her appearance and for her clothing, up to the “leg-o-meter”<sup>41</sup>. In a cartoon published by the daily newspaper, Il Fatto Quotidiano, on December 16<sup>th</sup>, the former minister “Maria Etruria” is portrayed with four different looks. The more difficult the political situation, the higher the “leg-o-meter” - as it was called - goes up, and the skimpier the undersecretary dresses. This is the sense of the cartoon. The caption reads: "*A handy tool that, measuring the height of the skirt, allows you to understand at what level of difficulty Minister Boschi is.*" These range from long trousers to knee-high skirts and a skimpy dress, the “miniskirt with bare leg.” In 2016, Beppe Grillo, founder of the 5-star movement, launched a tweet "*#boschidovesei in tangenziale con la pina*" (at what street corner are you with Pina), with an explicit reference to street prostitution<sup>42</sup>.

MP Giorgia Meloni, a member of the right-wing party Fratelli d'Italia, and who was pregnant at the time, was told that instead of standing in the elections for mayor of Rome, she could “be a mother”, while the mayor of Rome, Virginia Raggi, was dubbed by the journalist Feltri as "*Virginia patata bollente*" (Virginia hot pot) in the daily newspaper "Libero"<sup>43</sup>.

The most serious sexist offenses and insults have certainly been directed against Laura Boldrini, President of the Lower House of Parliament (third highest ranking official). On the occasion of the International Day against Violence on 25 November 2016, Ms Boldrini published some of the countless violent messages that she received<sup>44</sup>:

<sup>37</sup> "We disabled women, invisible twice over: we are viewed as objects, and defective ones at that ", by Massimiliano Salvo, L'Espresso, 13 October 2017.

<sup>38</sup> <https://infosannio.wordpress.com/2011/01/21/da-noemi-a-ruby-tutti-gli-scandali-di-berlusconi/>; <http://www.todays.it/cronaca/olgettine-berlusconi-chi-sono.html>

<sup>39</sup> <http://www.repubblica.it/2008/03/sezioni/politica/verso-elezioni-10/berlusconi-precari/berlusconi-precari.html>

<sup>40</sup> <https://www.ultimavoce.it/sessismo-in-politica-la-patata-bollente-la-bambola-gonfiabile-e-i-palloni-gonfiati/>

<sup>41</sup> <https://www.internazionale.it/opinione/oliver-meiler/2016/03/16/italia-sessismo> and <https://www.nextquotidiano.it/in-talia-insultare-maria-elena-boschi-non-e-un-problema/> and

<https://www.wired.it/attualita/politica/2017/12/18/boschi-vignetta-cosciometro-sessismo-stato-brado/>

<sup>42</sup> <http://www.ilgiornale.it/news/politica/tweet-sessista-grillo-dove-boschi-picerno-tangenziale-1211541.html>

<sup>43</sup> <https://www.nextquotidiano.it/la-querela-a-vittorio-feltri-per-virginia-raggi-patata-bollente>

<sup>44</sup> [http://www.repubblica.it/cronaca/2016/11/25/news/\\_basta\\_sessismo\\_in\\_rete\\_e\\_boldrini\\_pubblica\\_i\\_nomi\\_di\\_chi\\_la\\_insulta-152755106/](http://www.repubblica.it/cronaca/2016/11/25/news/_basta_sessismo_in_rete_e_boldrini_pubblica_i_nomi_di_chi_la_insulta-152755106/)

## DO YOU THINK THIS IS FREEDOM OF EXPRESSION?

**SECONDO VOI QUESTA È LIBERTÀ D'ESPRESSIONE?**

 **Onofrio Filitti Boldrini sei una troia**  
Mi piace · Rispondi · Invia messaggio · 19 h

 **Giovanni Bonomi A pisellate in faccia ti prenderei!!! Milf**  
Mi piace · Rispondi ·  1 · 6 h · Modificato

 **Faro Di Maria MA MAI NESSUNO L'AMMAZZA A STA TERRORISTA???**  
Mi piace · Rispondi ·  2 · 2 h

 **Sergio Clinco Gran puttana pompinara**  
Rispondi · Mostra · 21 ottobre alle ore 4:04

 **Feliziani Gabriella Maria Boldrini sei una puttana andiccappata vattene a casa fai la cosa giusta x una volta vaiiiiiiii viaaaaaa**  
Rispondi · Mostra · 18 h

 **Andrea Granelli Querelatemi Sto cazzo ... Visto che un deprevato parla di querele su una persona che merita di fare la fine di una puttana ....Visto che ha cominciato la sua carriera facendo pompini Umberto smaila. .... E poi festini privati**  
Mi piace · Rispondi · Invia messaggio · 16 novembre alle ore 19:55

 **Ivan Eryk Sgobba FAI SCHIFO AL CAZZO BRUTTISSIMA GRAN TROIA DI MERDAAAAAAAAAAAAAAAAAAAAA!!!!!!!!!!!! DEVI FARE LA MORTE PIU' BRUTTA E LENTA CHE ESISTE!!!!!!!!!!!! FATTI INCLURARE DA TUTTI GLI ALBANESI E RIMANI LI MIGNOTTA!!!!!!!!!!!!**  
Rispondi · Mostra · 15 ottobre alle ore 4:43

 **simone\_antonini92** 3g  
Anche se ho quasi 25 anni chiedo un regalo a Babbo natale...Per Natale voglio stare chiuso in una stanza con te, soli, tu ed io...Solo noi e la mia accetta. Partirei con il taglio delle mani prima.

 **simone\_antonini92** 3g  
Voglio aprirti il cervello, la calotta cranica...pisciarc dentro, almeno posso regolare il livello di piscio che hai dentro la tua testa.

- Boldrini, you're a whore
- I would cock-slap you! MILF
- WHY DOESN'T SOMEONE KILL THIS TERRORIST?
- Great cock-sucking whore
- Boldrini, you're a handicapped whore, go home. For once in your life do the right thing and get oooooout of heeere.
- Sue this cock... Since I'm a pervert who speaks of suing against someone who deserves being treated like a whore... Considering that she started her career sucking Umberto Smaila's cock... And all the private parties
- YOU'RE DISGUSTING TO MY COCK, HUGE WHORE, PIECE OF SHIT!!! YOU DESERVE A SLOW AND TERRIBLE DEATH!!! HAVE ALL ALBANIANS BANG YOU ASS, AND STAY THERE, WHORE!!!
- Even though I'm just 25 years old, I hope Santa brings me a present. I want to be left with you in a closed room with my axe. And I would start from your hands.
- I want to open your head, your skull, piss in it so I can at least top up the level of piss in your brain.

As a candidate in the recent 2018 elections, Laura Boldrini was still the target of a clearly sexist campaign. At a meeting, some young supporters of the League burned a puppet of her, and the then party secretary, Matteo Salvini (at the time of drafting this report, Deputy Prime Minister

and Minister of the Interior), defined it a "foolish" act<sup>45</sup>. In 2016, during a meeting, Salvini took an inflatable doll presenting it as the double of Ms Boldrini, then President of the Lower House<sup>46</sup>.

Finally, in Italy, the *#MeToo* world campaign, following the scandal of sexual abuse in the world of American cinema, had a disturbing impact<sup>47</sup>, with one of the protagonists and first accusers of Harvey Weinstein, the Italian actress Asia Argento, who has been the target of a barrage of tweets and offensive messages, being considered guilty of the rape she was the victim of, because she did not speak out immediately.

## RECOMMENDATION

1. Urgent preventive measures against sexism and misogyny in general, and against online violence are recommended; the introduction of effective monitoring and sanctioning mechanisms on all types of media and communication behaviour is recommended, expressing sexism and a stereotyped view of the roles of men and women.

### *Article 13 – Awareness-raising*

#### THE ITALIAN SITUATION AND CRITICAL ISSUES

The measures required in Italy to raise awareness of male violence against women are complex.

The topic of awareness appears in article 5 of law 119/2013. Whilst the Italian government has indeed launched several campaigns, these were not conducted systematically, nor were they run in conjunction with women's organisations and other NGOs working in the field of equality. Often the campaigns were conceived using an implicitly stereotyped vision of gender roles and models. One such example was the advertising campaign entitled "Respect women. Respect the world" in which women are compared to a white rose, and male violence to a dark form of evil<sup>48</sup>.

Other campaigns, again run by the government, convey an image of women whereby they are exclusively victims. One such campaign was the anti-violence campaign conducted in 2017 entitled, "Release your inner courage", which concludes by encouraging women subjected to violence to ask for help<sup>49</sup>. This implies that it is a passive attitude and lack of courage that makes it difficult for women being subjected to violence to report and discuss it. The campaign also failed to examine the violent nature of male behaviour, or to stimulate a political reflection on the social and cultural nature of violence. Other campaigns opted for violence prevention approaches aimed almost exclusively at women, whilst men were entirely removed from the portrayal and campaign target, thereby eliminating any responsibility they have<sup>50</sup>. The risk here is of a false perception whereby violence against women should be viewed solely as a women's problem and the problem is therefore reinforced. The only campaign aimed at men was entitled *#cosedaumini* (meaning "man talk"). It was presented in November 2014 and consisted of five episodes of a web series. Campaigns concerning sexuality, consent and the specific subject of sexual violence are also conspicuous by their absence. None of the national campaigns for raising awareness about gender discrimination and violence against women include women and girls with

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<sup>45</sup> <https://www.ilfattoquotidiano.it/2018/01/26/lega-giovani-padani-bruciano-fantoccio-di-laura-boldrini-in-piazza-a-busto-arsizio/4117498/>

<sup>46</sup> [https://milano.corriere.it/notizie/politica/16\\_luglio\\_25/salvini-bambola-gonfiabile-sosia-boldrini-polemica-comizio-soncino-d6b884a0-5266-11e6-9335-9746f12b2562.shtml](https://milano.corriere.it/notizie/politica/16_luglio_25/salvini-bambola-gonfiabile-sosia-boldrini-polemica-comizio-soncino-d6b884a0-5266-11e6-9335-9746f12b2562.shtml)

<sup>47</sup> [https://www.huffingtonpost.it/2017/10/12/asia-argento-sullo-scandalo-sessuale-di-hollywood-solo-in-italia-sono-considerata-colpevole-dello-stupro-perche-non-denunciai\\_a\\_23240854/](https://www.huffingtonpost.it/2017/10/12/asia-argento-sullo-scandalo-sessuale-di-hollywood-solo-in-italia-sono-considerata-colpevole-dello-stupro-perche-non-denunciai_a_23240854/)

<sup>48</sup> "A white rose, symbolising the purity of the feminine world, gradually turns black when it is poisoned by the dark evil that is violence against women. The pain is private and concealed, out of fear or shame" (quoted from "Respect women. Respect the world", 2009).

<sup>49</sup> "Violence has many words. We want to hear yours. Release your inner courage; call 1522"

<sup>50</sup> Example of the campaign "Recognise violence", launched on 25 November 2013 and subsequently re-run in 2014 and 2015

disabilities. Not even the National Action Plan on disability sets out measures to raise awareness geared towards recognising their human value and dignity.

Awareness raising initiatives should by no means be limited to Government-run campaigns, or by only adopting traditional media, such as television and/or the printed press. These cannot reach vast audiences. Nor has any research been conducted into the impact these campaigns have on the way the phenomenon itself is perceived. Most importantly, no research was done on whether the culture they were actually portraying would impact people's awareness about gender discrimination.

Finally, violence prevention interventions should also aim to educate the younger generations. The goal should be to bring cultural and social change to the dominant gender models, with activities aimed also at children and men. None of these are being tackled at present.

National and local authorities have had an international regulatory framework at their disposal, as well as the national guidelines, "Education for respect: for equality of the sexes, preventing gender violence and all forms of discrimination", since October 2017. These guidelines address article 1 paragraph 16 of law 107/2015<sup>51</sup>, enabling them to draw up policies for schools, action plans and appropriate educational programmes that counteract gender stereotypes and the prevention of violence. Nonetheless, work on applying these Guidelines has only just begun, and no general assessments can be made at this time.

## Article 14 – Education

### THE ITALIAN SITUATION AND CRITICAL ISSUES

The recent issuing (October 2017) of the national guidelines referred to above provides an important reference point in spreading educational practices concerning identity/differences/relations between the sexes, counteracting violence against women, as well as any form of gender-based discrimination in public schools.

The document was drafted by a mixed group of experts with a variety of stances and profiles. The result of their work is reflected in a text that is not always coherent, and at times is fundamentally weak in its approach, particularly the chapter dedicated to *Preventing violence against women* (3) where the reference to the "structural dimension" of the "phenomenon" appears in one brief line, and is barely touched upon.

The weak nature of this chapter and its muddled approach are, however, made up for by the first chapters of the document (*Education for equality between the sexes and respecting differences* and *The feminine and the masculine in language*). These provide considerable food for thought and prompts for education and training to counteract violence against women. They do so by examining it against the broader backdrop of the cultural reasons that engender and perpetuate violence.

Attempts in Italy to adopt training initiatives for equality and gender differences are the result of scattered initiatives by individual teachers and farsighted local authorities aware of the importance of these topics. They are not yielded by an education policy applied uniformly throughout the country. Over the years, these measures have triggered reactions from conservative forces and fundamentalist Catholic groups which have distorted and interpreted incorrectly the term "gender", ascribing meanings to the so-called "gender theories" which do not actually apply to them, and seriously undermining efforts to educate children about inclusion and respecting differences of "leading children astray" in order to prevent the measures from being adopted.

In addition, failure to acknowledge the skills and approaches developed by anti-violence organisations and Centres in prevention, education and awareness, and the reiterated attacks to which they have been subjected whilst undertaking educational projects, have resulted in many schools turning to doctors and psychologists for an approach they deem to be more scientific. In actual fact, it is instead an approach that fails to take the cultural and social dimension of violence

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<sup>51</sup> Law 13 July 2015, no. 107. School reform entitled "La Buona scuola" (Good Schooling)

against women into account, and often stops short of adopting a gender perspective. Work on revising textbooks between the late nineties and the first years of the new millennium with a view to promoting equal opportunities is unfinished. The Self-Regulation Code for schoolbook publishers (called the Polite project), which was first devised to ensure a gender perspective would be an orientating criterion for textbooks, has had little effect for two reasons. Firstly, only a minority of publishers opted to adhere to the code, and secondly, even the publishers who did take part failed to produce textbooks that respected equality principles. In spite of adopting the Code, schoolbook publishers are not capable of interpreting guidelines, or else they do not wish to adapt to the extent of the change they are asked to initiate. Some young publishing houses are working to spread a culture of differences and quality through their publications (particularly those aimed at childhood and early teens) without any sexist stereotypes, yet there is no link between their work and the authorities. The question of gender education has met with opposition from the Catholic hierarchies, and, as a result, a number of Regions and Municipalities have funded educational projects (e.g. Emilia-Romagna, Friuli Venezia Giulia, Tuscany and others), although the same is not the case in other Regions and Municipalities. The political orientation of local bodies and the press is an important discriminating factor in the decision to promote or obstruct the initiatives. The lack of training for professionals in schools (managers, teachers and administrative staff) needs to be overcome with suitable courses that introduce them to topics of identity/difference/relations between genders and analyses them, as well as countering violence against women and every form of discrimination. This should include relevant literature and discussing case studies, educational guidelines and materials for work in class. The lack of supervision of teachers could be made up for by providing forms of assistance for teachers in group and class activities, including guidance materials for observation, monitoring, verifying and documenting the activities conducted.

#### **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*12. The Committee recommends that the State party:*

*(a) Enhance women's awareness of their rights under the Convention and the remedies available to them to claim violations of such rights, and ensure that information on the Convention, the Optional Protocol and the Committee's general recommendations is provided to all women ... ;*

*26. The Committee recommends that the State party:*

*(a) Put in place a comprehensive strategy with proactive and sustained measures to eliminate and modify patriarchal attitudes and gender stereotypes, with particular focus on women belonging to minority group, who are often the target of hate speech and racially motivated violence, by revising textbooks and curricula and conducting awareness-raising campaigns;*

*(b) Engage with relevant actors, impose stricter regulations and use innovative measures, when possible, to enhance a positive and non-stereotypical portrayal of women in the media and in advertisements.*

#### **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

*95. The Government should also:*

*(a) Continue to conduct awareness-raising campaigns aimed at eliminating stereotypical attitudes about the roles and responsibilities of women and men in the family, society and workplace;*

*(c) Continue to conduct targeted sensitization campaigns, including with CSOs, to increase awareness on violence against women generally, and women from marginalized groups in particular;*

#### **RECOMMENDATIONS**

1. It is recommended that the Government does not limit itself to conducting media campaigns, but focus its awareness-raising on prevention and gender equality, including training initiatives of all kinds, particularly those aimed at young people and professionals working in the field.
2. Funds for raising awareness and preventing violence against women must be guaranteed for specialist services that support women and for FGM.



3. The Italian government must, as a matter of urgency, promote and finance campaigns to raise awareness, with particular regard to educational plans inside and outside schools, from early childhood onwards and at all school levels. In so doing, these campaigns must also consider forms of violence such as FGM and take into account overlaps between the gender dimension and disability, ethnic origin, religious orientation and sexual orientation, including in LGBTQ contexts.
4. Knowledge and skills developed by associations and teachers over the years must be put to good use, as it is no longer possible to put off awareness schemes in which education about differences becomes a qualifying aspect of schooling.

## EDUCATIONAL PROJECTS FOR AWARENESS RAISING HALTED BY AUTHORITIES AND LOCAL BODIES

Throughout the years, the many initiatives that individuals and anti-violence associations and centres have undertaken in Italy to prevent violence against women – offering training, workshops in schools, public debates, distribution of textbooks, games and activities – have come up against increasing opposition and attempts to delegitimise them by conservative forces and fundamentalist Catholic groups. Italy has witnessed a pervasive and constant “anti-gender” campaign, in which the scientific concept of “gender” was linked to concepts which have nothing to do with it. These campaigns accused those involved in educating children to respect differences and reject unequal relationships between men and women of “leading children astray and promoting masturbation, etc.”. The main consequence has been the delegitimation of academic research and gender studies, shutting down and halting prevention initiatives, creating a climate of suspicion and fear around the term “gender” not just in public opinion, but above all affecting the commitment of authorities. Some of the main activities halted in the two years from 2015-17 include the following:

In Trieste in March 2015, the educational kit and associated educational project entitled *The Respect Game*, devised for schools to raise awareness amongst children of gender violence and promote equal opportunities for men and women, was banned. The cancellation of *The Respect Game* by the City Council coincided with a defamatory campaign conducted by the local press and major Italian spreadsheets: the headline in *Il Giornale* read “The madness of 'gender games' boys dressing as girls” (by Fausto Biloslavo printed on 15/03/2015), whilst *Libero* wrote of “pornography lessons at nursery” during which children were “invited to touch their intimate parts” (Giordano Teodoldi, 10/03/2015, *Libero*).

In Venice in June 2015, the City Council banned 1,098 volumes in public libraries aimed at boys and girls, 36 publications for pre-schools and 10 for nurseries covering gender stereotypes and awareness of violence-related topics. They were illustrated fairytales for children focusing on the topic of respect. In 2015, the course entitled “Starting over with you” was suspended in Pescara. The course was aimed at pre-schools and primary schools (and was backed by the Councillor’s Office for Culture and Public Education of Pescara Council) after a member of the Forza Italia political party raised the issue in a Council session, accusing readers visiting the classes of proposing books that had the effect of “confusing children, getting them to undress and masturbate and trying to make them become homosexual.” The project aimed to promote reading.

In September 2016, Cristina Cappellini, Councillor for Culture and Identity and a member of the Lega party in the Lombardy Region, set thirty thousand Euro aside to open a “Family Service”, a telephone number for parents to “report the spread of the so-called “gender” theory in the region’s schools”, and to defend the traditional family. The service is run by AGE, the Italian Association of Christian parents which also organises the Family Day.

In Cascina, in the province of Pisa, the P.O.Ster project promoted by the Società della Salute (Health Society) and funded by the Tuscany Region to counteract gender stereotypes and educate young people about reciprocal respect in secondary schools, was halted in December 2017 with the support of the “Observatory for natural families” and the assistance of the Lega-run council of Cascina.

Protests against educational initiatives such as *Schools make the difference* (2015, Rome) and the Childhood Literature Festival *Coming out of the Shell* (2017, San Pietro in Casale, Bologna), to mention just a few, bear witness to the fact that all over Italy, associations, schools and libraries have been targeted for choosing to raise awareness of violence. They also provide insight into just how startlingly backward the country is from a cultural and social standpoint.

In Bologna, in September 2017, the provincial committee for Bologna, “Defending our Children–Family Day” and Forza Italia drew up lists of all the schools in which gender theories are covered, awarding a red mark to schools that carry out “gender-sensitive” activities, yellow for those where there are just “traces of gender” and green where nothing was found.

These examples illustrate the witch-hunt climate, the fear and intimidation which has spread over the years thanks to press, right-wing and catholic groups against teachers, schools and associations. Only in a handful of cases have local and national institutions managed to provide a coherent, compact reaction to these attacks: in some cases the projects were halted, whilst on other occasions they were supported using language which omitted the term “gender” to avoid raising the hackles of the media and opposition political forces.

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

The issue of training is a crucial one for all those coming into contact with women who are victims of violence, as demonstrated by the comments to the articles in this report.

Effective training on the topic of violence requires a gender perspective and should be incorporated into the study curricula of all the relevant professions (in the social and medical sphere, the judiciary and the forces of law and order). The aim is to create heightened awareness and greater knowledge of the phenomenon, whilst providing future private and public professionals with a solid grounding on the issue. Educational institutions (such as schools and universities) have only sporadic knowledge of gender, and gender is not covered by any kind or level of education service. There is some element of analysis in master's degrees, but never in institutional courses.

As regards training for professionals coming into contact with victims of gender violence, including FGM, there are two main problems to be analysed. The first is the lack of guidelines for training measures for those working in this field, which provides a basis for the measures themselves and their subsequent assessment. The second is the absence of professionals trained in these guidelines who are able to make a real contribution towards counteracting violence by training professionals of various types (magistrates, doctors and social workers) to provide intervention in connection with the topic concerned.

Authorities in Italy leave training on the subject of violence to initiatives conducted by institutional bodies, such as the regional authorities. Since law 328/2000 was first issued, these have been responsible for conducting measures in social and medical spheres. They also operate in compliance with regional laws, and in the best-case scenarios they have links with the experienced Anti-violence Centres or shelters for women in the area concerned, which were in fact the first to develop gender violence training courses and have been offering for a number of years to all relevant professional categories (social, health, law and order forces and schools). Yet there is no national-level coordination, nor is information shared about the topics and objectives pursued by the training.

In relation to women with disabilities, consultancy and emergency service staff are often unaware of the risks these women run because they are unfamiliar with the condition of disability. Alternatively, given their lack of cultural and specialist knowledge, they do not recognise the abuse as being violent and/or linked to the disability. The risk of improper interpretation of the signs of violence is reduced when professionals attend specific training courses. It is necessary for gender-oriented training to be included in all working environments for those who come into contact with situations of violence. This must cover those at greatest risk due to the nature of their disability, particularly if there are considerable communication and support needs, which professionals of the judiciary, social and health services are not usually trained to tackle.

It is instead necessary that a gender-based approach to training be incorporated into every working environment and with individuals who come into contact with situations of a violent nature. This training should be ongoing, and must be repeated regularly in order to reach all staff members (including natural staff turn-over). It is in this way only that knowledge of the phenomenon's complexity can be consolidated, allowing gender stereotypes of all kinds to be weeded out in every field, whilst also providing the right response to the needs of women and at the same time creating a culture that can be shared. The current trend amongst those responsible for personnel training (public and private) to hold spur-of-the-moment or occasional initiatives (e.g. for half a day or a few hours of e-learning) so they can show they have tackled this phenomenon, is superficial and is ineffective if not carried out as described above.

The 2017-2020 Plan indicated that there is a need to incorporate the topic of violence into university studies that prepare professionals who may or must deal with violence (doctors, lawyers and social care workers). While there are initiatives conducted in a number of organisations, there is no national monitoring centre on this topic, and little importance has been

given to planning. In addition, the need for governance as regards institutional measures carried out on a national, regional and local level is merely mentioned but without describing tasks, objectives and responsibility for implementation.

#### **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*27. The Committee urges the State party to:*

*(c) ensure that public officials, especially law enforcement officials and professionals in the judiciary, health-care, social work and education are systematically and fully sensitized to all forms of violence against women and girls;*

#### **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*12. The Committee recommends that the State party:*

*(b) Further strengthen legal training and capacity-building programmes for judges, prosecutors, lawyers and other legal professionals on the Convention, the Optional Protocol, the Committee's general recommendations and the Committee's views on individual communications and inquiries, so as to enable them to apply, invoke and/or refer to the provisions of the Convention directly and to interpret national legislation in line with the Convention.*

*18. (d) Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers.*

#### **RECOMMENDATIONS**

1. As a matter of urgency, training that incorporates a gender approach to the prevention of all forms of violence against women (including FGM and women with disabilities) must become an ongoing and repeated element of basic training for all the relevant professions (including medical staff, social workers, the judiciary and forces of law and order), including in regular professional top-up training.
2. It is advisable for educational and training courses with a gender approach for preventing all forms of violence against women (including FGM and women with disabilities) to become obligatory and a structured part of all types and levels of education. Training/supervision should be adopted for managers, teachers and administrative personnel, offering specific courses in university curricula (lawyers, doctors, social workers, psychologists, communicators, future teachers etc.), producing instruments, materials and textbooks which do not discriminate, and which instead value the presence and participation of women in every aspect of public life, ensuring that gender stereotypes and sexist language are not reproduced.

#### *Article 16 – Preventive intervention and treatment programmes*

#### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Article 5, letter g of law 119/2013, states the need to adopt programmes for rehabilitating perpetrators. The 2015-2017 Plan indicates the Guidelines to be used for "rehabilitating/reinserting men who have perpetrated acts of violence". We recommend that services aimed at perpetrators operate within anti-violence networks for women. At the same time, family mediation must be ruled out, and rehabilitation work must be carried out along with work to reintegrate offenders once outside. In addition, with the implementation of article 4, par. 5-*bis* of law 119/2013 concerning warnings, the Chief of Police is obliged to identify Centres for perpetrators which the offender can approach.

These Guidelines are general and do not set out any local programming or controls/certification of the quality of the measures. In practice, each Centre/service (there are more private than public) has set itself up independently, based on the cultural and therapeutic approach of the professionals concerned. At times they adopt programmes already tried and tested in other countries for reference, using funds that are generally of a modest entity provided by the authorities (regions and councils).

Before proceeding, it is important to remember that in Italy today, judgments passed for the forms of violence covered by the I.C. almost always involve suspended sentences. Only rarely do sentences affect visiting rights to children.

By the end of 2015, a total of 33 Centres had been registered in Italy, and in 2016 the number had already risen to 44, clearly demonstrating the demand in the areas concerned<sup>52</sup>. Of these Centres, 17 (divided between founding Centres and members) joined the Relive network, having adopted its goals, internal organisation and set-up. Many Centres state that their primary objective is the safety of women and minors, and that they work alongside local service networks of which the Anti-violence Centres are a part. Not all have a programme for assessing the results of the path followed, and as a result it is difficult to assess the impact they have and how effective they are. The Centres are not distributed evenly throughout Italy, and there is a considerable prevalence in the north and centre of Italy. There are no minimum operating requirements, and there is a lack of comparison between the methods adopted and the results obtained. Nor has the "integrated approach" between the local anti-violence Network and the local anti-violence Centre been defined. No judicial regulations have been set out to establish the obligation of sentenced perpetrators to participate in specialist services. The above-mentioned regulation stating that specialist services must be indicated in warnings issued to men is completely disregarded, not least owing to the absence of a list of the Centres for men. Centres working with perpetrators generally lack any planning, regulation and coordination on a national level, and have insufficient funding to allow them to become effective prevention tools and play a more inclusive role in anti-violence strategies.

There is not enough information as regards application of the regulation introduced by law 119/2013 in the code of criminal procedure<sup>53</sup>, which states that when the person under investigation positively undergoes a programme for abusers, the prosecutor and judge are informed so they can take this into account when potentially amending the measure being applied. It is vital to provide training and information to the forces of law and order, and define the regulations/methods of linking the perpetrator of the violence with the judicial system.

The same applies for prisons where measures aimed at sex offenders and violent offenders are relatively rare, in spite of the fact that there are some which are outstanding (such as the project for sex offenders run by Bollate prison in Milan, organised and run by CIPM- the Italian Centre for the Promotion of Mediation).

## RECOMMENDATIONS

1. Drafting a qualitative/quantitative map – as stipulated in the 2017-2020 Plan– of the Centres in Italy as a matter of urgency, noting the methods adopted and figures on activities conducted and results. It is necessary to increase activities for analysing the risk of repeat offending in order to establish effective strategies to prevent new violence from occurring.
2. As regards Centres/services for men convicted of mistreatment, it is advisable to draft Guidelines whose main purpose is to ensure the safety of women and minors and adopt an integrated approach with the local Anti-violence Centre. It must be obligatory for staff to undergo training in line with the objectives pursued by the centres.

## *Article 17 – Participation of the private sector and the media*

### THE ITALIAN SITUATION AND CRITICAL ISSUES

In Italy, there is as yet no law against stereotyped and sexist attitudes in the media and in advertising, in spite of the fact that since 2010, a number of bills on the subject have been filed in Parliament.

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<sup>52</sup> A. Bozzoli, M. Merelli, MG: Ruggerini, *The dark side of men. Male violence against women: cultural models for intervention*. Third Edition, EDIESSE, Rome 2017

<sup>53</sup> Article 285 *quater* of the Code of Criminal Procedure

Since 2011, the only measure actually adopted consists of the introduction, in the extraordinary Plan, of the concept of expert commissions to assess and monitor the impact of sexist stereotypes in how gender violence is reported. Nonetheless, the extraordinary Plan fails to give specific guidelines concerning the method to be used for picking these commissions, or what their actual sphere of action is. To date, it has yet to be implemented. As a result, images, messages and highly sexist actions continue to be portrayed and go unpunished, with a worrying "sense of normality". There is thus far no government monitoring of persistent stereotypes in information and the media in general, both when portraying women and when discussing violence. There are three gender-monitoring projects conducted by the national Order of journalists, by AGCOM (the Authority for vigilance of the entire public and private audio-television sector) and by the RAI. The first does not make its figures public, whilst the RAI, which does publish its figures, does not follow up the results of the monitoring with any corrective measures or penalties. Given that these measures are of no use whatsoever for achieving the requested results, we can safely say that no appropriate steps have been taken, be they legislative or of any other kind, to ensure that public radio and television media operate in compliance with the principles set out by the Convention, and that all media and advertising desist from any practices which might constitute discrimination against women. The guidelines set out for public radio and television are contained in the RAI corporate financial statement, and do not apply for private television stations. The situation has worsened compared with previous CEDAW reports, because successive Governments dissolved the technical Round Table set up in 2012 by the Ministry for Equal Opportunities to draft a self-regulation Code, in order to provide guidelines for proper representation of females in the media.

#### RECOMMENDATION

1. We recommend passing a law against sexism in the media (advertising, press, social networks, television shows etc.) as a matter of urgency. This must define the meaning of 'sexist message' and stipulate the reporting/notifying mechanism, with administrative and pecuniary penalties, and establish an independent observatory on sexism in the media.

## CHAPTER IV – PROTECTION AND SUPPORT

### *Article 18 – General obligations*

#### THE ITALIAN SITUATION AND CRITICAL ISSUES

Domestic violence against women and girls remains pervasive in Italy<sup>54</sup>, in spite of several legislative measures and policies being adopted to tackle it<sup>55</sup>. The Italian system for protecting women who are victims of domestic violence is both insufficient and inadequate,<sup>56</sup> and the tangible application of the laws is slowed down or even prevented by prejudices and discriminatory stereotypes against women who continue to suffer violence and discrimination

<sup>54</sup> [http://www.istat.it/it/files/2015/06/Violenze\\_contro\\_le\\_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf](http://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf)

The 2015 survey by ISTAT (the Italian institute of statistics) revealed signs of improvement compared with the situation recorded in 2006, but the violence recorded has manifested itself in more serious form, and the number of women fearing for their lives has increased (from 18.8% in 2006 to 34.5% in 2014). Violence perpetrated by non-partners is also more serious.

<sup>55</sup> <http://www.pariopportunita.gov.it/materiale/elenco-normative/>

<sup>56</sup> The ECHR, *Talpis vs. Italy*, 2 March; the ECHR (European Court of Human Rights) severely condemned Italy for violating the right to life and the prohibition of inhumane, degrading treatment, as well as the discrimination prohibition, as it said the Italian authorities had failed to intervene to protect a woman and her children, victims of domestic violence perpetrated by her husband, thereby actually endorsing said violent conduct (which continued until the attempted murder of the plaintiff, and the murder of one of her children). [https://hudoc.echr.coe.int/eng#{"itemid":\["001-171508"\]}](https://hudoc.echr.coe.int/eng#{)

because they are women<sup>57</sup>.

The situation for women with a disability or health problems is particularly critical: 36% of those in poor health have suffered physical or sexual violence, as have 36.6% of those with serious limitations, as opposed to 11.3% of the general female population. The risk of being subjected to rape or attempted rape is double (10% versus 4.7% of women without disabilities).

The most serious forms of violence are perpetrated by partners, relatives, friends or acquaintances of women with disabilities.<sup>58</sup> Unfortunately, it is often the very same men looking after these women that take advantage of them. For this reason, and owing to the difficulties experienced by women with psychological/intellectual disabilities (not just to report the offences but even to recognise them as such), violence suffered in the domestic environment, domestic violence on women with disabilities and particularly those with psychological or intellectual disabilities are hardly ever reported (only in 10% of cases)<sup>59</sup>. In addition, domestic violence against them can be perceived as a form of education and correction of inappropriate behaviour.

There is no cooperation between the various players who could form a "common culture" in the fight to curb violence against women, or which actually adopts the principles of the I.C. in general, particularly those indicated under article 18. The creation of this common culture is hindered by the absence of any real, effective cooperation between the players, and a lack of training in the field. In Italy, effective responses that harness a gender based approach to the specific needs of women and their children and which aim to protect human rights and safeguard victims, are not guaranteed. Nor is there an integrated approach between support and protection services. As a result, secondary victimisation cannot be prevented. Above and beyond the stipulated measures, one of the main problems in Italy today continues to be the cultural attitudes and stereotypes about women held by legal, social services, medical and police professionals that constantly question the credibility of women. Even when they file a complaint, there is a tendency to view this instrument as an attempt at manipulation by women for other purposes (such as obtaining advantages in a separation). Women with disabilities are deemed to be less credible, as they are often held to be "of unsound mind" and not reliable. Moreover, women with psychological/intellectual disabilities who have greater support needs may not actually have legal personality as they are subject to legal tutelage or guardianship, which have never been abolished in Italy.

The ISTAT survey of 2015 has shown some improvement with respect to the situation reported in 2006, but the violence has proved to be more severe, and more women have been fearing for their lives (from 18,8% of 2006 to 34,5% of 2014). Women with disabilities, particularly if they require considerable support, are more exposed to domestic violence owing to the isolation they live in. This is due to the fact that they are forced to remain within the family home into adult life and have greater problems in finding accommodation and accessing higher education, professional training and paid employment. Women with disabilities who do not have an educational qualification total 16.3% as opposed to 12.6% of men with disabilities. Just 35.1% of women with functional limitations, invalidity or chronic illnesses work, as opposed to the figure of 52.5% for men in the same conditions<sup>60</sup>.

The means that women who are victims and want to report crimes are often ill-equipped to provide any protection for their rights, because the means dictated by domestic law can rarely be

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<sup>57</sup> [https://hudoc.echr.coe.int/eng#{"itemid":\["001-171508"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>58</sup> Violence against women inside and outside the family, ISTAT (the Italian statistical institute), 2015 [https://www.istat.it/it/files/2015/06/Violenze\\_contro\\_le\\_donne.pdf?title=Violenza+contro+le+donne+%20+05%2Fgiu%2F2015+-+Testo+integrale.pdf](https://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+%20+05%2Fgiu%2F2015+-+Testo+integrale.pdf)

<sup>59</sup> "For the 1.7 million disabled women, there is little to celebrate. It is harder for us to exercise every right" Interview by Renato La Cara with Stefania Pedroni, Deputy Chairperson of the UILDM women's group. Published in *Il Fatto Quotidiano*, 8 March 2018.

<sup>60</sup> Violence against women both inside and outside the family, ISTAT, 2015 [https://www.istat.it/it/files/2015/06/Violenze\\_contro\\_le\\_donne.pdf?title=Violenza+contro+le+donne+%20+05%2Fgiu%2F2015+-+Testo+integrale.pdf](https://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+%20+05%2Fgiu%2F2015+-+Testo+integrale.pdf)

applied within a reasonable timeframe<sup>61</sup>, as well as being relatively hard to access owing to their extremely technical nature, and the lack of cultural knowledge of those who should apply them. This results in the regulatory and protective system being insufficient to guarantee the protection of a woman suffering domestic violence and her children. Nor is it able to meet her specific needs. Information on their rights and means of reporting offences are practically out of the reach of women with psycho-social disabilities, as well as those with intellectual or sensorial disabilities using alternative forms of communication.

The risk of secondary victimisation is heightened when the woman attempts to escape the violence, a situation exacerbated for women with disabilities when it involves more than one of the players involved in the process to escape the violence. This includes involvement from social and medical services, law enforcers and the judicial system.

Italy boasts a number of laws designed to counteract violence against women. The abstract wording and interpretation might, at first glance, make these laws appear adequate. However, and owing to the predominance of stereotypes and prejudices against women, the incompetence and lack of technical and cultural training of the key players involved, and the absence of cooperation between those players, the laws are not applied incisively and are not based on an understanding of gender violence, including FGM. Nor do they aim to safeguard human rights or the genuine safety of the women and their children.

## **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

*96. The Government should further:*

*(a) Continue to take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters for the assistance and protection of women victims of violence;*

*(b) Ensure that shelters operate according to international and national human rights standards and that accountability mechanisms are put in place to monitor the support provided to women victims of violence;*

### **RECOMMENDATIONS**

1. National governance guidelines be developed confirming the multi-agency intervention approach, with the coordination of Associations that run Centres and shelters and orientate the victim towards the appropriate specialist services (anti-violence centres and shelters), need to be drawn up as a matter of urgency.
2. Specific training for general and protection services must be developed and implemented in conjunction with women's associations that are experts in the field, and Anti-violence centres and shelters, in order to avoid secondary victimisation. Training should ensure the capacity to recognize women with disabilities victims of violence, especially those with an intellectual disability or with major communication difficulties.

## *Article 19 – Information*

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

There is no one integrated information system available for women that describes the types of support services available, and the legal measures they can request. Women subjected to violence often first approach general services such as the medical services and social services of their local area. Only rarely do they have suitable information about specialist services, in spite of the fact that these are required by law (law 119/2013). There are no leaflets except in areas where a combined effort with the specialist services has been consolidated. The initiative is generally taken by NGOs for women and Anti-violence Centres working on a local level. The same applies for health services, except where specific protocols apply.

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<sup>61</sup> [https://hudoc.echr.coe.int/eng#{"itemid":\["001-171508"\]}](https://hudoc.echr.coe.int/eng#{)



Public prosecutors and police forces have adopted information tools for victims that answer the requirements set out by articles 90-*bis* and subsequent articles of the Italian civil procedural code<sup>62</sup> in particular. In most cases, these tools are actually only a superfluous reproduction of regulatory content that is hard for victims to understand, and in any cases are only rarely available in any language other than Italian. There are very rare and virtuous examples, but they always involve isolated initiatives. In any case, the information is only available when the victim decides to take legal action.

## RECOMMENDATIONS

1. It is necessary to provide all the professionals and services that come into contact with women experiencing violence with standardised, effective communication methods, including those for women with disabilities, regarding the rights they are entitled to exercise and the support services available.
2. The information provided by the judicial authorities and the forces of law and order must be given promptly, be clearly comprehensible, with appropriate communication instruments other than those of verbal language for women with disabilities (i.e. easy-to-read format, braille, sign language) and suitable for exercising one's rights, specifying the rights to be exercised, their timeframe, details of the offices and places where information can be requested, and must be accessible in a language with which the victim is familiar.

## *Article 20 – General support services*

### THE ITALIAN SITUATION AND CRITICAL ISSUES

The Social Policies Fund, redefined by law 328/2000, is the Italian source of funding for all assistance measures for people and families. It is "a fund destined for Regional authorities to develop the integrated network of measures and social services ..."<sup>63</sup>. This fund is used to finance Regional Social Plans and Area Social Plans which schedule and implement services for people in difficulty, including women who are victims of violence, on an area-by-area basis.

The highest amount of funding allocated to the Social Policies Fund, 1.884 billion Euro, occurred in 2004 (the second Berlusconi government). Since then, the amount allocated dropped to its lowest-ever level in 2012 (43.7 million Euro) before increasing again (for example, in 2013 the Fund totalled 344.17 million Euro). With the 2015 stability law, the Fund was allocated an annual structural amount totalling 300 million with effect from 2015. At the present time, this means that in 2017 there is an amount equal to just 5% of the amount available in 2004, the year in which the Fund reached its highest funding ever.

Local authorities receive almost all the resources they need to provide accommodation for women who have been victims of violence, particularly those with minor children, from this Fund. Given the scarcity of the funding, the Government has destined further resources obtained from national action Plans. According to the Italian Court of Auditors, this yields around €6,000.00 per year in economic resources to Anti-violence Centres and shelters<sup>64</sup>.

It should also be noted that general support services (public services) are distributed unevenly throughout Italy. There is a large presence in the centre and north of the country, and a structural lack of facilities in the south and the islands. Women either have the opportunity to access them or there is nothing available. Training courses for staff are also very fragmented in nature (still too few and superficial in nature), and there is a lack of a general approach in the way male violence against women is interpreted, as well as an absence of the means to prevent and

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<sup>62</sup> Introduced and amended to implement Directive 2012/29/EU

<sup>63</sup> Definition from the website of the Ministry of Labour and Social Policies <http://lavoro.gov.it/strumenti-e-servizi/Fondo-nazionale-politiche-sociali/Pagine/default.aspx>

<sup>64</sup> See Resolution dated 5 September 2016, no. 9/2016/G passed by the Court of Auditors, which stated regarding the distribution of the resources that "Thanks to this criterion, each AVC has been allocated 5,862.28 Euro and each Shelter 6,720.18 Euro"

counteract it. These are not gender-oriented services, nor are they women-friendly. Staff members often do not have the right information needed to provide violence victims with orientation about specialist support services, which they often see as being too "biased". In particular, the inability of social services to recognise and understand the reality of violence against women in its full context (which all too often continues to be termed "conflict"), and their failure to record the witnessing violence, leads to interventions that are inadequate. This is particularly the case with mistreated mothers where service provider perceptions of alleged parental incompetence places these women at frequent risk of the suspension and/or loss of parental responsibility (see comment to article 31).

An even more significant delay involves the entire sphere of promoting independent employment or housing for women, particularly in southern Italy and the islands. The measures adopted by the general support services are not designed to meet the needs set out in article 20 nos. 1 and 2, and are often unable to create the partnerships with specialist services required to ensure they can take charge of processes and remove the women from violent contexts.

The financial support provided to find a home and work are wholly insufficient and, in a country beleaguered by a severe economic crisis, measures have not been adopted to increase the autonomy of women and their economic independence. Within Europe, Italy ranks fifth with its 2.7% gap in the risk of destitution to the female sex; discrimination based on sex remains very high in Italy, as women do not have the same access to resources (from credit to inheritance rights to stable employment) as men. Their salaries are on average lower, and for many, work is not remunerated at all or they are forced to work illegally and without any form of welfare or social protection. The latest ISTAT figures show that in 2016, there were around two and a half million women living in absolute poverty in Italy (7.9% of the entire female population), and it is above all mothers who are forced to live in absolute poverty (in fact one child in eight lives in utter destitution)<sup>65</sup>.

## RECOMMENDATIONS

1. Permanent, in-depth training of staff working in general support services is recommended as a matter of urgency, with a general view to cooperating with NGOs that have expertise in the field of violence against women, as well as Anti-violence Centres.
2. It is necessary to set sufficient resources aside, and to develop distribution criteria that are transparent and mindful of the principles set out in the I.C., and which guarantee access to specialist services for women who fall victim to violence

## *Article 21 – Assistance in individual/collective complaints*

### THE ITALIAN SITUATION AND CRITICAL ISSUES

Women's NGOs that manage Anti-violence Centres and/or shelters provide assistance and legal advice anonymously and free of charge to women who choose to report the violence they have suffered. These NGOs supply information concerning access to both civil and criminal justice, with attention primarily focusing on safety and the practical needs of the woman as far as human rights are concerned. Other associations of legal experts (such as the UDI, or Union of Women in Italy) or facilities such as family counselling centres or help desks can provide legal advice free of charge. The key difference in the effectiveness of this assistance depends on whether it is networked with the organisations that run the shelters.

In Italy, there is also a complete lack of information for women subjected to violence as to how to make use of the regional and international complaint mechanisms that exist already (the European court of human rights, or the CEDAW committee). The CEDAW convention itself is

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<sup>65</sup> <https://www.istat.it/it/archivio/poverta+relativa+eassoluta>

relatively unknown in Italy and rarely applied. It is only thanks to the NGOs whose voluntary work ensures that the report on the Italian situation is drafted periodically.<sup>66</sup>

## Articles 22 – Specialist support services

## Articles 23 – Shelters

### THE ITALIAN SITUATION AND CRITICAL ISSUES

It is alarming to note that for many years there was no official mapping of the various organisations and specialist female support services in Italy for women and children who had fallen victim to violence. At present, only "mapping services linked to public utility service 1522" on the website of the Department for Equal Opportunities<sup>67</sup> can be consulted. Under the heading 'Anti-violence centres and specialist services', it lists organisations that are very different, and in no way correspond with the criteria set out in the I.C. for specialist support services. The DEO proclaims that in October 2017, the number of shelters went from 163 in 2013 to 258, and the number of Anti-violence Centres rose from 188 to 296, without giving any indication of the sources and/or criteria used, or the intervention standards applied to these figures<sup>68</sup>.

The figures recorded by NGOs offering specialist services (some of which have been doing so for 30 years now) to women and their children experiencing violence, and which operate as a network (such as the national D.i.Re association, which encompasses 81 NGOs throughout Italy, or the information gathered by ComeCiTrovì, which gathers together 243 Centres, including those of D.i.Re)<sup>69</sup> vary. In Italy, not all the specialist Anti-violence Centres for women have shelters, due primarily to a lack of funding. The figure for shelters collated by the NGOs listed puts the number far lower than the 258 quoted by the DEO: 79 (of which 50 from the national D.i.Re network association)<sup>70</sup> for a total of 627 sleeping accommodations. This number is distributed unevenly throughout the country, and is inadequate to meet the needs and safety requirements of women subjected to violence. It is a complete violation of the recommendation (EG-TFV (2008) 6) which sets the numerical parameter of safe sheltered housing, specialised for women and available in every region, at one bed for every 10,000 inhabitants. According to the quoted study by WAVE<sup>71</sup>, 6,078 beds are needed in Italy. This makes for a shortfall of no less than 5,451 beds.

In addition to welfare cuts, bureaucratic mechanisms often imposed by the public bodies providing the funds (mother and child hospitality "funded by social services" (72%) or "against payment" (64%) or with a "shared" decision reached between the Centre and funding Body (in 58% of cases<sup>72</sup>), place the safety and protection of women and their children at serious risk, not least because their distribution varies so much from one Region to another. This situation leads to considerable uncertainty regarding timeframes and the possibility of affording immediate protection to women in danger.

It should be borne in mind that Italy was condemned by the European court of Human Rights for failing to protect a woman and her son from a violent husband because there were no funds to house her in the facility where she had sought refuge<sup>73</sup>. In particular "the head of social services

<sup>66</sup> <https://www.direcontrolaviolenza.it/rapporto-ombra-cedaw-lavori-in-corsa-2015-adesione-alla-piattaforma-cedaw-italia/> e <http://www.aidos.it/wp-content/uploads/2017/06/RapportoOmbraCEDAW2017.pdf>

<sup>67</sup> <http://www.pariopportunita.gov.it/materiale/mappa-centri-antiviolenza/>

<sup>68</sup> <http://www.pariopportunita.gov.it/media/3387/la-violenza-sessuale-e-di-genere-sitocompressed.pdf>

<sup>69</sup> <https://www.wave-network.org/resources/research-reports>

<sup>70</sup> [www.comecitrovi.women.it](http://www.comecitrovi.women.it)

<sup>71</sup> [http://files.wave-network.org/researchreports/WAVE\\_Report\\_2015.pdf](http://files.wave-network.org/researchreports/WAVE_Report_2015.pdf)

<sup>72</sup> <http://www.direcontrolaviolenza.it/wp-content/uploads/2017/11/Report-finale-new.pdf>

<sup>73</sup> In the case mentioned, Ms. Talpis was put up on an emergency basis in a shelter. After three months, the costs of which were borne entirely by the shelter, Udine City Council refused to shoulder the expenses for Ms. Talpis, citing the absence of funds in its budget, and because the muddled procedure stipulated in the resolution of Udine City Council had not been respected (27.3.2006 no. 40)

of Udine denied the funds needed to allow the association sheltering Ms. Talpis to house her in the shelter or at least provide alternative accommodation". In addition, in this case, responsibility was passed back and forth between various public services due to questions linked entirely to form and bureaucracy<sup>74</sup>, to the point that the European court stated that the Italian authorities failed to provide Ms. Talpis effective protection, thereby promoting the impunity of her husband. The Ministers' Deputies of the Council of Europe have in their decision of 7th of June 2018 regarding the Supervision of the execution of the European Court's judgments requested more individual and general measures<sup>75</sup>.

Many areas also experience problems with protecting adult women not accompanied by minor children, either because they do not have children or because of age (too young, 18 – 25 age range, or too old with grown-up children) and for which local organisations cannot answer financially. This creates situations that pose an objective risk for this target group of gender-based violence.

Another critical issue raised by D.i.Re in its annual monitoring reports<sup>76</sup> is the difficulty involved in guaranteeing continuity to the services offered to women, taking into account the precariousness and instability of guaranteed funds. Besides the many critical issues highlighted in the comment to Article 7, the public method for awarding these services through tenders, using the lowest bid mechanism, risks penalising the quality of the services almost everywhere in Italy.

As a result, a single vision prevails: "normalising" violence and addressing it with social-welfare or socio-medical measures. This neutral approach<sup>77</sup> overlooks the particular professionalism and skill of women's NGOs that, in accordance with the principles of the I.C., provide specialist support to women and children who are victims of violence<sup>78</sup>.

## RECOMMENDATIONS

1. It is necessary to review and change public funding methods as a matter of urgency. Sufficient Shelters are needed to meet international parameters throughout Italy, preferably of the kind that can safely guarantee quality services as well as expertise on gender and human rights, and professional quality. Specific entries must be dedicated to funding them in budgets.
2. It is necessary to guarantee the continuity of the services given to victims by specialist women's NGOs, to allow the latter to work in accordance with Italian and international standards governing human rights. Responsibility for providing support and protection to women who have suffered violence must be awarded on a public basis.
3. It is necessary to standardise regional laws and the relevant regulations governing access procedures and hospitality in shelters for women who are victims of violence, regardless of their income, as a matter of urgency.

## *Article 24 – Telephone helplines*

### THE ITALIAN SITUATION AND CRITICAL ISSUES

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[https://hudoc.echr.coe.int/eng#{"languageisocode":\["FRE"\],"appno":\["41237/14"\],"documentcollectionid2":\["CH AMBER"\],"itemid":\["001-171508"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>74</sup> [https://hudoc.echr.coe.int/eng#{"languageisocode":\["FRE"\],"appno":\["41237/14"\],"documentcollectionid2":\["CH AMBER"\],"itemid":\["001-171508"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>75</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016808af73a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808af73a)

<sup>76</sup> [https://www.direcontrolaviolenza.it/wp-content/uploads/2018/02/Report-finale\\_dati\\_2016\\_DiRE.pdf?x20461](https://www.direcontrolaviolenza.it/wp-content/uploads/2018/02/Report-finale_dati_2016_DiRE.pdf?x20461);  
[https://www.direcontrolaviolenza.it/wp-content/uploads/2017/04/Report\\_dati-2015-DEF.pdf?x20461](https://www.direcontrolaviolenza.it/wp-content/uploads/2017/04/Report_dati-2015-DEF.pdf?x20461);  
[https://www.direcontrolaviolenza.it/wp-content/uploads/2015/11/Report\\_dati-2014.pdf?x20461](https://www.direcontrolaviolenza.it/wp-content/uploads/2015/11/Report_dati-2014.pdf?x20461)

<sup>77</sup> <file:///Intesa-CU-Requisiti-minimi-centri-antiviolenza-e-case-rifugio-GU-40-180215.pdf>

<sup>78</sup> <http://www.direcontrolaviolenza.it/ri-guardarsi-i-centri-antiviolenza-fra-politica-competenze-e-pratiche-di-intervento/>

In Italy, the DEO created the public service telephone number **1522** in 2006. It is available 24 hours a day, every day of the year, and can be accessed free of charge anywhere in the country. This service provides an initial response to the needs of gender violence and stalking victims, as well as information concerning the public and private social and medical services available in Italy (including the DEO's mapping as mentioned above).

The latest annual data available for 2016 on the government's website reveals a significant drop in the number of calls compared with the year before (no report available). Calls to this number are, for the most part, made by women who are victims of violence requesting help (30.32%) or for information about the closest Anti-violence Centre (29.65%). The report only analyses calls from women who are victims of violence and who asked the telephone service for help (no. 5,197).

The figures show that the government-run free phone service is chiefly of an informative nature, and helps users reach out to specialist support services who remain responsible for providing an effective response which is close to the needs of victims.

One of the most critical issues highlighted by Anti-violence Centres is that women who are not victims of violence, but who suffer from problems other than those that the services can address, are referred to Anti-violence services by the 1522 number. This shows that it is necessary to better define the target in the telephone response, referring the women correctly to the specialist services concerned, according to their needs. It appears evident that the response to women subjected to gender violence is not provided with a suitable, specialist means, or coordinated with Anti-violence centres and Shelters.

The 1522 service has in fact cut back considerably its links with the Anti-violence Centres. It has instead become a service that offers a standardised response and does not always guide women towards a specialist service. It also steers requests for help towards unspecialised services and, in some cases, gives responses that do not meet the needs expressed by the women concerned. In this sense, it should be noted that the mapping at the disposal of the 1522 line has revealed considerable shortfalls in recent years. No real checks on the references listed in the mapping have been conducted since 2013.

The free number for FGM (800 300 558), run by the State Police, was activated in 2009. It received very few calls and has not been active for years, despite remaining visible on-line (and always only in Italian).

## *Article 25 – Support for victims of sexual violence*

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

In Italy, there are no specialist support Centres for cases of rape and sexual violence. In certain city hospitals, such as Sexual and Domestic Violence Aid (SVSeD) at Policlinico of Milan, and the Sexual Violence Aid Centre (SVS) at Turin's S. Anna Hospital), services to victims of rape and sexual violence go beyond the traditional and necessary medical assistance and provide safe storage of all evidentiary material which might be used in criminal proceedings for 6 months, and also offer psychological and social counselling. Legal advice is provided in certain areas and cases. It should be borne in mind, however, that all Anti-violence Centres run by women's NGOs in Italy have the skills to provide specialist support to victims of sexual violence. In fact, they offer support to women who have fallen victim to sexual violence and, where necessary, can also accompany them during medical and judicial proceedings.

A statistic concerning sexual violence in Italy which should not be overlooked can be obtained by crossing figures from the latest ISTAT<sup>79</sup> figures, which records 11 rapes each day, with the figures for charges pressed, which indicates that just 7.4% of sexual violence cases are actually reported. Many victims are afraid to report a crime, given in most cases the violence is committed by a partner or a person the victim knows. Alarming, a minor is present (as the victim or perpetrator)

<sup>79</sup>

[https://www.istat.it/it/files/2017/09/Audizione-ISTAT-femminicidio\\_Allegato-statistico.pdf?title=Femminicidio+e+violenza+di+genere+-+282Fset2F2017+-+Audizione+ISTAT+femminicidio\\_Allegato+statistico.pdf](https://www.istat.it/it/files/2017/09/Audizione-ISTAT-femminicidio_Allegato-statistico.pdf?title=Femminicidio+e+violenza+di+genere+-+282Fset2F2017+-+Audizione+ISTAT+femminicidio_Allegato+statistico.pdf)

in four out of one hundred cases. For the most part, the phenomenon of sexual violence continues to remain concealed. Even in instances where a criminal charge finally reaches the judicial authorities, and in particular the courtrooms, the woman is confronted by deep-seated prejudices and serious forms of secondary victimisation (see comment to articles 49/56).

## RECOMMENDATIONS

1. Far-reaching training for all individuals entering into contact with sexual violence is urgently required, particularly parties who should guarantee victims are not subjected to secondary victimisation, especially where the police forces and judicial authorities are concerned.
2. A campaign to raise awareness about sexual violence and the stereotypes that encourage secondary victimisation is required at all levels.

## *Article 26 – Protection and support for child witnesses*

### THE ITALIAN SITUATION AND CRITICAL ISSUES

In Italy, the seriousness and extent of ‘witnessing violence’, and its consequences, continue to be overlooked. There is a tendency to lay the blame with the mother (the victim of the violence), making her responsible for so-called "parental alienation" when, after separation, she attempts to defend herself from the violent ex-partner and father of her children. This is then reinforced by social services and the various experts (psychologists and court-appointed experts) in courtrooms, as analysed in greater detail in the comment to article 31. The definition given to witnessing violence in Italy is not so much a legal matter as it is a descriptive nature, and accounts for a phenomenon about which little is known.<sup>80</sup>

Witnessing violence is not recognised as an offence in its own right. Yet there are signs it is beginning to be considered in some sentences (although still too few!) as an offence involving mistreatment of minors. Alternatively, in accordance with law 119/2013, it can be considered an aggravating circumstance in article 572 of the penal code against the perpetrator of violent acts, when they are committed "in the presence of a minor under the age of eighteen". Clearly, the provision is insufficient and of a purely repressive nature, and of no importance where civil law is concerned.

To date, the main objective of social services and courts is to safeguard and preserve "relationships with offspring", namely the parent-child relationship. This is based on the concept that preserving an emotional bond with a biological parent generates beneficial effects in itself, and that committing violent actions against one’s partner in a relationship is not behaviour indicating a lack of parenting skills. The deeply rooted conviction is that a mistreating man can be (and in most cases actually is) a good parent. In this respect, a sentence issued by the Court of Rome is emblematic<sup>81</sup>. It is illustrative of many other cases throughout the entire country, and demonstrates that the Italian legal system and social services are not "child-friendly". In the case in question, the man responsible for violent and aggressive behaviour against his ex-wife, for whom the separation was blamed, did not lose custody of the children. He would only have lost custody if the harmful conduct had been made against the children as well!

Where available, specialist Anti-violence Centres run by women’s NGOs offer help and support to minor victims of witnessing and/or direct violence within the family. In most cases, however, responsibility for support and assistance is passed on to general support services that have little or no training in the field of violence against women. The tendency is for these organisations to interpret their role with a presumed "neutral approach" which, even in cases of violence, always involves putting parents on the same level. This leaves ample margin for the violent parent to continue behaving in a violent manner against the children and the mother.

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<sup>80</sup> Definition Cismai file:///C:/Users/Carrano%20Titti/Downloads/Opuscolo\_ViolenzaAssistita\_Bassa.pdf

<sup>81</sup> [https://www.laleggetuttti.it/118975\\_la-separazione-con-addebito-non-impedisce-laffidamento-dei-figli](https://www.laleggetuttti.it/118975_la-separazione-con-addebito-non-impedisce-laffidamento-dei-figli)

Unfortunately, many children have been killed by fathers out of revenge against the woman and/or along with the woman, or in an extended suicide.

An emblematic case is that of Federico Barakat, who was killed by his father during a protected meeting at the local health authority of San Donato Milanese, in spite of his mother repeatedly pressing charges for abuse and stalking. In addition, she was accused of obstructing the relationship between father and son. Today the case is being examined by the European Court of Human Rights in Strasburg<sup>82</sup>.

#### **2011 RECOMMENDATIONS CEDAW COMMITTEE**

50. *The Committee noted that Act No. 54/2006 introduced shared (physicals) custody as the preferred default in cases of separation or divorce. However, the Committee is concerned at the lack of studies of the effect of this legal change, especially in light of comparative research that points to negative effects on children (especially small children) of forced shared custody. It is further concerned at reports of suspicion towards claim of child abuse in custody cases, based on the dubious theory of Parental Alienation Syndrome.*

51. *The Committee calls upon the State party to evaluate the legal change in the area of child custody through scientific studies, in order to assess its long-term effects on women and children, bearing in mind the experience accumulated in other countries on this matter.*

#### **RECOMMENDATIONS**

1. It is critical, and highly urgent, to make an entry in the Civil Code whereby intra-family violence is expressly cited as a cause for ruling against shared custody and witnessing violence as a cause of forfeiture or limitation of parental responsibility.
2. It is important to introduce ongoing and obligatory training on witnessing and general violence to social, medical and legal professionals.

## **CHAPTER V – SUBSTANTIVE LAW**

### *Article 29 – Civil lawsuits and remedies*

#### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

With Law 154/2001, the legislator introduced specific measures against violence in family relations, including the precautionary measure of removal from the family home in criminal law, and the same measure in civil law. This involves protection orders against family abuses with which the Civil Judge may order a violent person to cease conduct which damages the physical or moral integrity of the spouse/cohabiting partner, and removal from the family home with the prohibition to approach it. In these cases, assessment of the prejudice legitimising a protection order is left to the discretion of the judge examining the case. In the Italian scenario, this results in the order being applied unevenly. As regards the timeframe needed for the measure to be applied, there is a considerable difference between the various courts in Italy. In Bologna, it usually takes no more than a week to elapse between the moment that the application is filed and the decree is issued. In Milan, Palermo and Rome, the time taken to set the first hearing is considerable, and at times is so long (even more than 40 days) that it can seem more convenient to submit an application for separation, because these measures can be requested and obtained immediately.

In the event that the Judge should deem that the urgency is such that no delay can be allowed, the law expressly states that, having acquired the basic information necessary (including over the telephone), the Judge may immediately adopt measures *inaudita altera parte*, namely without the need to summon all the parties to a hearing beforehand. Given the urgency of the case, it is left to a subsequent hearing to evaluate how suitable this provision is. The hearing is set for no more

<sup>82</sup> <http://www.noidonne.org/articoli/federico-barakat-la-sua-morte-e-la-sentenza-ingiusta-della-cassazione-06280.php>

than 15 days after the measure is issued. Whilst not expressly requested, in various Italian courts, protection orders are only granted *inaudita altera parte* where episodes of physical violence have taken place (for other forms of violence, it is unlikely). In these situations, episodes of violence must be clearly proven by, for example, medical certificates, Accident and Emergency department reports, reports/lawsuits have been filed, photos of injuries etc.. This wholly contradicts the purpose of the measure itself. Where there are episodes of physical, psychological or financial violence, and in order to guarantee the principle of the right to make representations, Judges often set a hearing for the parties to make a personal appearance, as for example is the case in the Courts of Milan and Palermo. In these cases, the Judge places responsibility for notifying the summoned party of the application, and of the decree setting the date of the hearing, with the plaintiff. This puts the woman at serious risk. The time that elapses between the moment the application is served and the date of the hearing itself is, in fact, an extremely dangerous period of time for the victim, who is often forced to leave home to protect her own safety (and that of any children involved). In many cases, the victim no longer feels safe, and decides not to go through with the civil action out of fear that the summons will trigger even more violent reactions by the abuser.

The hearing involves a confrontation between the victim and the perpetrator. The Judge attempts to reach a compromise between the positions of the two parties, assessing the option of reaching an agreement whereby the violent party spontaneously leaves the home. As a result, the dispute is often resolved with a form of "conflict mediation" personally overseen by the Judges who are not in fact mediators! This is not even reported in the records, not least because their mediation or reconciliation activity is not recognised. This contravenes the provisions and precautions set out in Article 48 of the I.C..

Lastly, if a civil protection order is granted, it has a maximum duration of one year. This order can only be extended by the Judge "if serious reasons apply, and for the amount of time deemed strictly necessary". It is the victim's responsibility to prove that she needs further protection. Above and beyond this hypothesis, civil law does not provide for any measures that further prolong and safeguard protection of the victim.

If the civil order is violated, the perpetrator can be called upon to answer solely for the offence stipulated under and punished by article 388, par. 1 of the criminal code, namely "*wilful failure to fulfil a measure issued by the Judge*", an offence which can only be prosecuted with a complaint. As a result, the violation of this measure, unlike where criminal precautionary measures are concerned, does not lead to an increase in the existing measures applied to the abuser. Nor does it legitimise intervention by the police force to arrest the person concerned, thereby reinforcing the abuser's general view that he is not punishable.

As long ago as 2009, the Superior Council of Magistracy highlighted the difficulty experienced by civil judges in adopting precautionary measures. The chief cause of this included "*the absence of an actual specialisation in the appointed civil judge*"<sup>83</sup>. Some underscored the fact that the causes include, amongst others, "*the characteristic of the judging body, a civil judge, who is often unspecialised and whose training ties him or her to the adversarial principle and has little courage when it comes to issuing a judgement which has all the effects of a precautionary measure*" ("*Crimes against political women, laws and best practices*", Fabio Roia, published by Franco Angeli).

As for the second paragraph of Article 29 and the actual possibility that magistrates recognise civil responsibility, and for State compensation to be awarded as a result, reference must be made to the Vassalli law (117/1988, recently amended with law 18/2015). This law acknowledges that the unfair damage caused by a judicial act or sentence issued unlawfully, or with gross negligence, or resulting from the denial of justice, is liable for compensation. Only after the reform of 2015 (which redefined the hypothesis of gross negligence, abolished the filter of eligibility of appeals and increased the deadline for bringing the action to three years) have suits against magistrates increased, and in any case, they do not respond for their actions directly. Compensation for

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<sup>83</sup> Resolution of the Superior Council of Magistracy (CSM) dated 8.7.2009;



damages is in fact brought against the Prime Minister and can only be accepted once the ordinary means of challenging judgments deemed to have wrought damaging effects have been adopted.

In spite of precautionary sentencing to protect victims of violence covered by the I.C. being delayed and/or omitted altogether, there are no records of investigations into the responsibility of magistrates in this area. The only exception is the recent high-profile sentence issued by the Court of Messina<sup>84</sup>, which recognised the responsibility of the Public Prosecutor in having failed to order any enquiries and failing to adopt "any measure to neutralise the dangerousness of the [perpetrator of the offence]" in view of the numerous charges pressed by a woman who suffered abuse at the hands of her husband, and who in the end murdered her. Ten years after the crime was originally committed, this sentence ruled on the "*violation of the law with inexcusable negligence*" by the presiding magistrates, resulting in a sentence to pay the sum of €259,200.00 by way of compensation for pecuniary damage suffered. Whilst significant, the ruling still remains an isolated case of a ruling against the omissions of the magistracy.

No information concerning similar initiatives against the civil magistracy has been found. Nor are there any requests for rulings against the social services. In this respect, it is worth returning to the case of Federico Barakat. In spite of his mother repeatedly raising the alarm over the violent behaviour of his father in a variety of contexts, she was accused by social services of exaggeration, and was even threatened with being viewed as a parent who had estranged the father figure. The child was later stabbed by the father in a "neutral space" where the meeting, in the presence of an educator, had been arranged. Nobody was able to stop the father, nor were they able to provide first aid to the child, who then died. No questions were raised as to why it had proven possible for the father to enter the "neutral space" armed with a knife and a gun!. In spite of the mother initiating proceedings against social services for what had happened, the Italian judge ruled that there was no case to answer for responsibility<sup>85</sup>. The case is currently being heard by the European Court of Justice, which at the moment has ruled that the claim is admissible.

It goes without saying that it is very difficult to obtain acknowledgement of the responsibility of State authorities for failing to fulfil their duties to adopt necessary prevention and/or protection measures. This is owing to the complicated nature of court proceedings and a tendency to favour State-run organisations. In any case, no details have been collated on lawsuits brought to ascertain responsibility of magistrates: the cases described above are the only ones of which we are aware.

## **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*15. The Committee urges the State party to:*

*(a) place greater emphasis, in its efforts to eliminate discrimination against women, on the Convention as a legally binding and directly applicable human rights instrument;*

*27. (b) ensure that female victims of violence have immediate protection, including expulsion of perpetrator from the home, guarantee that they can stay in secure and well funded shelters, in all parts of the country, and that they have access to free legal aid, psycho-social counselling and adequate redress, including compensation;*

## **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*18. The Committee recommends that:*

*(c) Accord priority to measures to expedite legal proceedings and improve the treatment of victims of gender-based violence against women and to eliminate gender stereotyping within the judiciary;*

*(d) Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers.*

*28. (b) Evaluate the response of the police and the judiciary to complaints of sexual crimes and introduce mandatory capacity-building for judges, prosecutors, police officers and other law enforcement officers on the strict application of criminal law provisions on gender-based violence against women and on gender-sensitive procedures for interviewing women who are victims of violence;*

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<sup>84</sup> Court of Messina, I civil section, sent. 30.5.2017

<sup>85</sup> Sentence of the Court of Milan 7705/2016;

(c) Encourage women to report incidents of domestic and sexual violence to law enforcement bodies by destigmatizing victims, sensitizing the police and the judiciary and raising awareness about the criminal nature of such acts and ensure that women have effective access to civil courts to obtain restraining orders against abusive partners;

## RECOMMENDATIONS

1. We recommend adopting removal and protection orders *inaudita altera parte* for all cases of violence contemplated by the I.C., and to rule out any attempts at mediation and/or conciliation.
2. We ask, as a matter of urgency, for legislative measures to be introduced, allowing compensation actions to be brought without preclusions, both against magistrates and other public officials or public service workers whose work has resulted in damages against the party concerned.
3. We would recommend training across the board and applying the responsibility mechanism outlined in the I.C. throughout.

## Article 30 – Compensation

### THE ITALIAN SITUATION AND CRITICAL ISSUES

The Italian legal system identifies two potential paths for victims of violence to pursue in requesting compensation for damages. One is in the civil court, the other in the criminal court by filing as a civil claimant in the case brought against the offender.

In civil law, it is possible to request compensation for any type of "unlawful act". It is the responsibility of the person who is filing the suit to prove the unlawful act, the damage suffered and the causal link between them. The complexity of the evidentiary system, the costs of proceedings and the long timescale involved in reaching sentencing, the outcome of which is in any case uncertain, means that in actual fact this civil compensation system is unused in cases of domestic violence (no information has been gathered on this issue). Another factor contributing to the disuse into which this system has fallen is the orientation of the legal mainstream, which rules that it is not possible to make a request for damages to be awarded in cases brought over separation or custody of minors. This forces the victim to embark on two separate lawsuits<sup>86</sup>.

In cases in which criminal proceedings are underway, the victim has the option of filing as a civil claimant and asking, within that lawsuit, for the damage suffered to be recognised. In trials involving violence against women during intimate relations, civil claimants are often subject to secondary victimisation. Whilst the case law of the Supreme Court of Cassation<sup>87</sup> states that the declarations of the victim can alone provide grounds for the judgment, in practice the story and the victim herself are subjected to thorough scrutiny as to the objective reliability of the story told, and the intrinsic subjective reliability of the witness. Reliability and credibility are undermined in claims brought by civil claimants, or where parallel proceedings are underway for separation/divorce/regulation of parental relationships, by the prejudice that they can be used for instrumental, self-serving purposes, or that the facts can be exaggerated for financial, vindictive or prevaricating purposes, amongst others. This assessment of credibility in offences in which the victim's testimony often stands alone or is the central source of proof, can shift the focus of the court's investigation from the responsibility of the suspect to the victim, and her genuine reliability. The stereotype of the real victim as a fragile, remissive person who does not make any demands for compensation against the suspect is still very much widespread in Italy, and leads to serious forms of secondary victimisation<sup>88</sup>.

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<sup>86</sup> Civ. Cassation, judgment 18870/2014

<sup>87</sup> Court of Cassation, 45920/14. Criminal court of Cassation section VI, judgment 06/06/2011 n° 22281, Criminal court of Cassation section III judgment 1.7.2015 filed on 20.06.2016 no. 25426/16

<sup>88</sup> It should be remembered that in the Italian legal system, participation as a civil claimant is not just a means for requesting compensation for damages resulting from an offence; it is the formality required in order for the damaged

At the end of proceedings, the criminal law Judge may issue a generic sentence for damages, to be paid in civil proceedings; awarding damages in full there and then, or referring the case to a separate civil lawsuit, for which the victim must shoulder the expense. To the extent to which damages have been ascertained, the Judge can issue a provisional sentence effective immediately, with the option (or burden) for the victim to resort to the Civil Judge for definitive quantification of the damages (article 539 of the Civil Procedural Code). This involves further trial expenses for the victim, who must embark on a second lawsuit and await the outcome, clearly drawing out the timeframe involved. In most cases, women who are victims of violence, following a lengthy wait for the result of the criminal judgment, do not enter a civil suit for definitive ascertainment of damages suffered, not least because the perpetrator has often disposed of any assets in the meantime, or the guarantees for ensuring the compensation is actually obtained no longer apply (resignation from work, registering property in the name of others, amongst others). In any case, the parameters needed for liquidating damages during criminal proceedings are not in place, particularly in cases involving a sentence for domestic violence offences, where moral damage to the victim is often acknowledged without uniform, proportional criteria.

Until a short time ago, the State was not liable to make any additional compensation. It was only with Law 122/2016, partly modified with Law 167/2017, passed to implement directive 2004/80/EC, that the Italian legislator explicitly recognised and regulated the right to State-funded indemnity for victims of violent intentional crime. The indemnity is, however, limited to the reimbursement of medical and welfare expenses alone (with the exception of murder and sexual violence cases, for which it is guaranteed regardless of whether proof that the expenses were sustained is actually available) and is subject to the following conditions:

- 1) Availability of funds (an appropriate Fund to compensate victims has been set up, totalling € 2,600,000.00. This fund also covers the victims of mafia-related offences, extortion and usury);
- 2) To have taken executive action against the perpetrator of the offence to no effect.

The amounts for compensation have only recently been established (decree issued by the Ministry of the Interior on 31.8.2017) and are as follows:

*"a) for the crime of murder, a fixed amount of Euro 7,200, and, in the event of murder committed by a spouse, even if separated or divorced, or by a person who is or was in a relationship with the affected person, a fixed amount of Euro 8,200 exclusively for the children of the victim;*

*b) for the crime of sexual violence as per Article 609-bis of the criminal code, unless the mitigating circumstance of lesser severity applies, at a fixed amount of Euro 4,800;*

*c) for crimes other than those described under letters a) and b), up to a maximum of Euro 3,000 by way of reimbursement for medical and welfare expenses."*

Clearly, such insignificant amounts do not guarantee "appropriate" compensation to the victims as set out in the I.C., much less so directive 2004/80/EC. Indemnity is limited to a mere handful of cases and is not paid to all victims. It is instead restricted to those under a very low-income ceiling and is subject to the availability of funds. The amounts set out in the Ministry of the Interior's decree do not in any case provide the "appropriate compensation" indicated by the I.C.. The incredible disparity between how victims of gender-based violence and victims of usury or mafia are treated is particularly worth noting. The Fund is the same, but the figures are in no way comparable.

An Italian Judge (Sent. of Court of Turin 18.4.2017, no. 2067) had already evaluated the relevant laws, ruling that the profile for implementing them was still unclear as the memorandums for application were not available at the time of the ruling. Indeed, the Judge felt the law to be lacking a complete reference to the circumstances for which compensation is sought. The subsequent issuing of the memorandums confirmed this doubt, given the limitations described above.

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party to enter criminal proceedings with the Judge, Public Prosecutor and defending attorney of the alleged offender, and to present her "reasons" backed by proof, amongst other means (documents and witness testimony).

The conditions of access to the Fund and the very low compensation sums recognized are an obstacle. Since the issue of the Law 122/2916 until today, only 164 victims have applied<sup>89</sup> Notwithstanding the problems involved in tackling ordinary civil proceedings to obtain compensation from the offender, the Italian legislator has yet to stipulate a general, additional obligation of the State to award compensation when the victim has suffered serious physical injuries, or damages to health as a result of one of the cases stipulated in and penalised by the Convention itself (article 35 of the I.C.), which do not necessarily fall within the definition of "violent intentional crimes" for which the State indemnity was originally provided.

## 2017 RECOMMENDATIONS CEDAW COMMITTEE

*In Recommendation n. 35, adopted in July 2017, the Committee recommends that States parties implement the following measures with regard to reparations (para. E):*

*(a) Provide effective reparations to victims/survivors of gender-based violence against women, including different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered;*

*(b) Establish specific funds for reparations or include allocations in the budgets of existing funds, for reparations to victims of gender-based violence against women. States parties should implement administrative reparations schemes without prejudice to the rights of victims/survivors to seek judicial remedies, design transformative reparations programs that help to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation, taking into account the individual, institutional and structural aspects. Priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors.*

## RECOMMENDATIONS

1. It should be possible to request compensation for damages suffered during proceedings for separation and/or custody of children.
2. It is necessary to set uniform, objective parameters to quantify the compensation of moral damage in criminal proceedings as a matter of urgency, and to encourage calculation of the damages within those proceedings without forcing the woman to embark on other lawsuits.
3. It is necessary to provide additional State-funded compensation for all ascertained forms of violence contemplated by the I.C..
4. The indemnity amounts should be increased as soon as possible, and the income limit for accessing State-funded indemnity should be scrapped.

*Article 31 – Custody, visitation rights and safety*

*Article 45 – Sanctions and measures*

*Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing*

## THE ITALIAN SITUATION AND CRITICAL ISSUES

In Italy, the principle of awarding shared custody to both parents of minor children is applied. The exception to the rule of shared custody is governed by article 337-*quater* of the Civil Code: "The judge may award custody of the children to just one of the parents if it is felt, with a motivated ruling, that

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<sup>89</sup> <http://www.interno.gov.it/it/contatti/commissario-coordinamento-iniziativa-solidarieta-vittime-dei-reati-tipo-mafioso-e-dei-reati-intenzionali-violenti>

*awarding custody to the other parent is not in the interests of the minor.*" In any case (including with exclusive custody to just one parent) the same rule states that *"unless otherwise established by the judge, decisions of most interest for children should be adopted by both parents."*

Figures produced by ISTAT (the Italian Institute of Statistics) on separation and divorce in Italy show that in 2005 (prior to the introduction of Law 54/2006), custody of 80.7% of children was awarded to the mother in separations, and 82.7% in divorces. After the law had come into force, in 2009 custody of 12.2% of children was awarded to the mother, versus 86.2% in shared custody. In 2015, custody of just 8.9% of children was awarded to the mother, versus 89% in shared custody.

In cases of "serious detriment" to the child, the legislator has stipulated that parental responsibility of the abusing parent can be forfeited and/or limited.

The generic wording of the part concerning "violation of the best interests of the child" and "serious detriment to the child", which do not expressly mention the hypothesis of violence in its many possible forms, has led to a general lack of application of these provisions in cases of witnessing violence. The judge's attention regarding measures that limit or erode responsibility is solely focused on violence aimed at the minor concerned (which frequently involves the limitation whereby direct psychological violence is not considered). In addition, there is a certain "imperviousness" to the violence perpetrated by one parent against another which has been witnessed by the minors (known as witnessing violence).

The problem is the lack of recognition of the violence: if the violence is ignored (and this is often the case, even if criminal proceedings against the party abusing the minor's mother are in progress at the same time, or a remand measure has been applied), any request to limit parental responsibility or grant sole custody is deemed groundless and illegitimate<sup>90</sup>.

Fathers accused of perpetrating acts of domestic violence have the same probability of obtaining custody of their children as non-violent fathers, as little importance is attached to violence in the domestic environment. The view is instead taken that these issues will be overcome in the future, thereby underestimating the potential danger to both mother and children in the future management of relationships, and projecting the idea that the father figure should never be absent. In addition, the danger this parent poses often goes unnoticed, and a form of behind-the-scenes mediation and/or conciliation is conducted before judges or social services with an aim to reaching an agreement on the rights and meeting times between the violent father and the minors, and to outline the separation process consensually. In this way, the woman is implicitly obliged to approach the proceedings with conciliation in mind, which denies justice even in cases in which the adoption of judicial measures was expressly requested. This implicitly violates the prohibition of mandatory mediation stipulated in article 48 of the Convention.

When mothers raise the issue of the violence suffered in order to request protection for their children against a violent father, they risk being penalised for being seen as *alienating, vindictive or in search of economic advantages*. Based on this stereotyped vision of women, the phenomenon of separated father associations has been making headway, the pressures of which yielded the Protocol of the Court of Brindisi<sup>91</sup>. This stated that children must be domiciled at the homes of both parents, resulting in child support payments no longer being made and the principle whereby the home of the married couple is no longer awarded, and as a result remains the property of the owner. The reclassification of what are known as "extraordinary expenses" for children might contribute further towards the impoverishment of the mother, who no longer finds legal foundations in her rightful request for a fair contribution from the father towards said expenses (see guidelines for regulating means of maintaining children in family law suits drafted

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<sup>90</sup> Patrizia Romito, *La violenza sulle donne e sui minori. Una guida per chi lavora sul campo*, Carocci, 2013; P. Romito, *La violenza di genere su donne e minori. Un'introduzione*, Angeli, 2016; P. Romito, *Un silenzio assordante. La violenza occultata su donne e minori*, Angeli, 2016 (Translated from original Italian by Janet Eastwood *A DEAFENING SILENCE Hidden violence against women and children*)

<sup>91</sup> [http://www.tribunale.brindisi.giustizia.it/FileTribunali/17/Sito/News/Tribunale%20di%20Brindisi\\_Linee%20Guida%20Famiglia.pdf](http://www.tribunale.brindisi.giustizia.it/FileTribunali/17/Sito/News/Tribunale%20di%20Brindisi_Linee%20Guida%20Famiglia.pdf)

by the CNF (the Italian National Forensic Council<sup>92</sup>).

In the Italian system, the link between criminal proceedings and civil proceedings is absent, other than the mere communication of the existence of the criminal proceedings to the Public Prosecutor for Minors, in accordance with article 609-*decies* of the Italian Criminal Code. Indeed, if on the one hand these communications are made, and they are relevant for the purposes of notifying the existence of criminal proceedings, on the other hand the Juvenile Court rarely issues measures that limit or erode parental responsibility, as is the case in proceedings brought before the ordinary judge. This has also been underlined by the C.S.M., body of the Italian magistrates, which in its Resolution of 9.5.2018 (par. 7.6)<sup>93</sup>, has stressed the necessity of cooperation between ordinary civil and criminal courts and juvenile courts in cases of pending separation or divorce proceeding in order to prevent secondary victimisation of women and children who suffered direct or witnessed violence by contradictory decisions in different proceedings. The C.S.M. recommends legislative changes on this and in the meantime the opportunity of protocols agreed between the civil and criminal courts.

In addition, it is particularly important to note that when proceedings are brought before the Juvenile Court as a result of the notification of violent conduct perpetrated by one parent to the detriment of the other and in front of their children, provisions awarding custody of minor children to Social Services are usually adopted, instead of awarding custody to the non-violent parent. In the collective imagination, this inevitably raises doubts about the parenting skills of the victim, whose powers and management of her children are limited, forcing her to interact with outside authorities for the various decisions concerning her children and to undergo the constant assessment by institutional figures, with the result that she suffers secondary victimisation.

In Italy, the direct link between the violence suffered by mothers and the serious consequences of a psychological, physical, social and cognitive type on children in the short and long term has yet to be recognised by the courts, particularly civil ones. In clear violation of Article 31 of the Convention, which rules that episodes of violence experienced by minor children (known as witnessing violence) must be taken into consideration, judges often fail to take the following into account when determining visitation and custody rights of children:

- 1) That the father is involved in criminal proceedings for maltreatment of the mother in the presence of the children;
- 2) Specific precautionary measures handed down by the criminal court, such as removal of the perpetrator from the household or the prohibition to approach the person(s) concerned;
- 3) A conviction for abuse;
- 4) Protection orders against abuse in the family issued by a civil court.

On the contrary, family civil law proceedings trigger controls of parenting abilities which involve an assessment of both parents whereby the cause which originally led to that situation is completely overlooked.

In ordinary or juvenile courts in Italy, court-appointed expert opinions (in a procedure called CTU or *Consulenza tecnica d'ufficio*, court-appointed technical consultancy) are often requested. These consultants are asked standard, non-differentiated questions that do not make explicit reference to the violence, much less to the criteria set out by the I.C. for visitation. The result is that the CTUs often conclude with generic reference to the "conflict", placing women and perpetrators on an even footing and encouraging the woman to reach agreements that do not take her safety, or that of her children, into account. Where professionals in the psycho-social and judicial fields are unable to identify the violence, they attempt the path of mediation to reach

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<sup>92</sup> <http://www.consiglionazionaleforense.it/documents/20182/69024/ai+Presidenti+dei+COA++trasmissione+Linee+Guida+per+modalit%C3%A0+mantenimento+dei+figli+nelle+cause+di+diritto+familiare++%2829-11-2017%29.pdf/8ebd2cae-ad1e-4ca6-98d6-bcc941f5e72a>

<sup>93</sup> <https://www.csm.it/documents/21768/87316/Risoluzione+sulle+linee+guida+in+tema+di+organizzazione+e+buone+prassi+per+la+trattazione+dei+procedimenti+relativi+a+reati+di+violenza+di+genere+e+domestica/4799cbdc-4af8-a794-f908-e1b38b7bc1fa>

shared custody, overlooking the fact that the safety of both the woman and the minors involved is jeopardised. They also resort to misleading explanations, describing the situation as one of exacerbated conflict, or cite Parental Alienation, particularly when minors express difficulties in relations with a violent paternal figure.

#### **P.A.S.-NEW DEFINITIONS FOR AN OLD HABIT<sup>94</sup>**

In Italy, PAS is achieving new forms of recognition. The debate about the "pathology" and its potential inclusion in DSM 5 has recently begun to move onto another level, being constantly rejected even by relevant case law. This shift has been towards a claim of the alienating behaviour of the parent who the minors live with, whereby it becomes no longer a pathology but instead a form of conduct. This situation has come about through the concept of "dual-parenting", analysed regardless of the presence of domestic violence and of the causes that led to the parents separating. The court-appointed expert witnesses ordered by magistrates, combined with the inspections requested by social services in the event of "serious conflict" fail to consider the violence exercised by one parent over the other. Nor does it take into account the violence to which minors have been witnessing. The approach adopted is one whereby the minor must in any case maintain significant relations with both parents.

The consequences of this condition are devastating for women who are asked to remain indifferent towards what they have experienced in terms of domestic violence, and namely to maintain ongoing, fair ties with their children's fathers who abused them. If the minors concerned side with the mother or state that they are afraid of their fathers, the responsibility almost always falls with the mother, who is deemed to be a vehicle for negativity towards the father which she transfers to her children. The consultants can actually go so far as to advise (as in a recent case in Lucca<sup>95</sup>) to remove the child from the mother, the only person the child has always lived with, and even to go so far as to go against the will of the minor concerned, even if they are no longer little (cases of children aged 9, 14 and 15) without taking the minor's psychological state into account.

The mother is invited, if not forced, to seek psychological support to overcome her position and her resentment towards the father [*sic!*], whilst the children concerned are forced to stay with their father. If this excessive approach does not work, threats can even end up being used to remove minors from their mothers in order to safeguard a relationship with violent fathers!

Current guidelines on shared custody do not explicitly state that in cases of maltreatment, abuse of corrective measures, sexual violence and physical violence, this custody should be ruled out. As a result, on the one hand they violate the rights of minors to a life free from any form of violence, whilst on the other they fail to protect women who fall victim to domestic violence. On the contrary, they expose them to an increased risk of violence by the ex-partner owing to the shared management of the children as imposed by the law.

The court-appointed expert witnesses the court avails are not qualified based on specialist knowledge of general and domestic violence. As a result, they are not sufficiently knowledgeable to assess the whole context from the proper standpoint. The consequences involve processes that can lead to women becoming victimised again. For example, the woman is ordered to cooperate with the other parent and to undertake parent support therapy (and in this process the woman will encounter other professionals without specific training on violence). All of these are measures that in reality force the victim to work closely with the violent individual, precisely because the violence to which the woman has been subjected is not taken account of. But she "must" move on!

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<sup>94</sup> Crisma, M., Romito, P. (2007) L'occultamento delle violenze sui minori: il caso della Sindrome da Alienazione Parentale. *Magazine of Sexuality*, 31(4):263-270

<sup>95</sup> <https://www.direcontrolaviolenza.it/mobilitazione-contro-pas-seccesso-a-lucca/>

It is within this alarming context that reference must again be made to the draft Decree 735, “*Norme in materia di affido condiviso, mantenimento diretto e garanzia di bigenitorialità*” (the Pillon Decree), which introduces, in contravention to Article 31 of the I.C., and applies in all separation/divorce proceedings involving minor children, provisions that could represent serious setbacks in the advancement of the rights of women, and the protection of the women and their children from domestic and gender-based violence. In direct contravention of Article 48 of the I.C., The Decree would introduce (Art 7 and 22) the requirement for compulsory mediation in all separation/divorce cases of parents of minor children as a condition in order to access judicial remedies. This would force women to participate in mediation with violent partners and prevent their access to an impartial judge. Furthermore, this proposal would force all children to see/meet the violent or abusing parent because the Decree stipulates that the child must be guaranteed a dual parenting arrangement (50% custody to each parent), independent of the child’s will and not taking into account a child’s specific circumstances or needs. Further, the new economic provisions (direct maintenance of the child instead of payment of maintenance to the other parent, in most cases the mother, and the assignment of the family flat/house to the owner, usually the man. All of these fail to account for the possible economic inequality that existed prior to the divorce/separation, and provides direct opportunities for economic abuse of women, preventing them, and in particular women victims of violence, from being capable of affording a separation or divorce. This also violates Article 16 of CEDAW. As very clearly articulated by the Special Rapporteur (see footnote 3), the Decree introduces for the first time in the Italian legal system two legal assumptions, both of which would have negative consequences for the party whose situation is most vulnerable. The first assumption concerns falsified evidence and/or unfounded basis of reports of abuse and physical and psychological violence. The second concerns the presence of parental alienation syndrome, which is itself a highly contested theory, without any need for factual or legal evidence to support this claim. These assumptions would appear to be in contravention of Article 31 of the I.C., which requires that incidents of violence be taken into account in custody decisions. Women in particular could risk a limitation of their parental responsibility or lose that responsibility in cases where reports of violence or their associated lawsuits did not lead to a conviction. Further, women will be at risk of being found guilty in cases where children express “refusal or alienation towards a parent”, and the additional risk of being subjected to a protection order or other severe consequences on their parental responsibility. It is clearly evident that the Pillon Decree will impede both the uncovering of domestic violence in a relationship, and the woman’s ability to escape it (Art 14). The Decree contains a hidden and intimidating intention to prevent women and children escaping from a violent situation through separation, and introduces several material obstacles for all women, causing great harm to the children involved and failing to guarantee their protection from their violent partner or father.

#### **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*51. The Committee calls upon the State party to evaluate the legal change in the area of child custody through scientific studies, in order to assess its long-term effects on women and children, bearing in mind the experience accumulated in other countries on this matter.*

#### **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*52. The Committee recommends that the State party:*

- (a) Take all measures necessary to discourage the use of “parental alienation syndrome” by experts and by courts in custody cases;*
- (b) Adequately consider the specific needs of women and children in determining child custody in cases involving gender-based violence in the domestic sphere;*
- (d) Set up a mechanism to take into consideration the disparity in the earning capacity and the human potential between the separating spouses, given women’s higher investment in childcare and domestic work at the expense of their career;*



(e) *Adopt legislation to guarantee the even implementation of services for and respect for the rights of all Italian children in all districts when the father fails to pay child maintenance.*

## **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

42. *Shared parental custody is the default position in marital separations. The Special Rapporteur was informed by a CSO in Bologna of a growing trend where this type of custody is awarded by courts, even in cases where children have directly or indirectly witnessed intrafamily violence. This is due to the exercise of judicial discretion, in the absence of specific legislation that addresses such circumstances and which can provide remedies for the protection of women and children.*

69. *[...] the lengthy delays in the justice system may also impact the outcome of a case. The prescription law allows for a matter to be dropped due to delays in the system. In addition, the lack of coordination between judges of the civil, criminal and juvenile benches when handling protective measures does sometimes result in conflicting judgments.*

71. *The practice of systematically granting joint parental custody, including in cases of intrafamily violence witnessed by children, allows for the perpetuation of domestic violence against divorced and separated women. The option of limiting or terminating parental rights occurs in rare cases of attempted murder or child abuse complaints. Instances where the former partner has used the joint custody of the child to maintain communication and indirectly continue exercising control over his former partner/wife (including by preventing her from choosing her place of residence) were shared with the Special Rapporteur*

94. *The Government should:*

(d) *Address the legal gap in the areas of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;*

(n) *Ratify and implement the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children;*

## **RECOMMENDATIONS**

1. We recommend specific reference to "domestic violence and witnessing violence" as a requisite for defining the violation of the best interests of the child, for the purposes of adopting sole custody measures and measures that limit/forfeit parental responsibility.
2. We recommend taking into account the relevance of reprimands, precautionary measures and any criminal convictions handed down for the purposes of adopting the measures under point a), in addition to obliging courts to provide their motivation.
3. The outright prohibition to rule in favour of direct or hidden mediation where the provisions under point b) exist, must be introduced as a matter of urgency.
4. It is necessary for the professionals who are appointed as court-appointed expert witnesses to receive specific training on the dynamics involved in violence and maltreatment, including by establishing a special professional roll.

## *Article 38 – Female genital mutilation*

### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Law No. 7 of 9 January 2006, containing *Provisions concerning the prevention and prohibition of practices of female genital mutilation* (O.J. No. 14 of 18 January 2006 and in force since 2 February 2006), introduced criminal (article 6) and administrative penalties (article 8), preventive rules, such as the promotion of activities aimed at prevention and at providing assistance to victims, data acquisition (article 2), the implementation of information campaigns for migrants from countries where FGM is carried out, the promotion of awareness-raising initiatives, the organization of information courses for infibulated pregnant women, the promotion of refresher courses for compulsory school teachers, the promotion of the monitoring of FGM cases in healthcare facilities (article 3), training plans for healthcare personnel (article 4), the creation of a toll-free number (article 5), and the provision of international cooperation programmes.

With regard to the provisions under criminal law set out by the I.C., the law considers FGM as a particular form of aggravated bodily injury. There are two cases set out in article 583-*bis* of the Criminal Code. The first paragraph contains the crime of genital mutilation consisting in clitoridectomy, excision, infibulation or any other practice that has the same effects and is punished with a prison sentence of 4 to 12 years. The second paragraph regards the crime of genital injury which provides for a prison sentence of 3 to 7 years for whomever, in the absence of therapeutic needs and in order to "impair sexual functions", causes other types of injury to female genitalia from which an illness of the body and mind may result. The latter is a separate independent criminal offence. In either case, the active subject is anyone, whether an Italian or foreign national, and the crime can be punished whether it is committed in Italy or abroad. Law no. 172 of 1 October 2012, which ratified the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) introduced the accessory penalty of the forfeiture of parental responsibility, as provided for by this law for the sexual abuse of children, to which FGM is assimilated.

In addition to specific regulations, FGM can also be protected by laws protecting minors. Article 330 of the Civil Code provides for the forfeiture of parental responsibility where a parent infringes or neglects his or her duties towards his or her children. In the presence of serious grounds, judges may also order the removal of the child from his or her family residence or the removal of the parent who mistreats or abuses the child. Article 333 of the Civil Code also refers to preventive measures in case of prejudicial behaviour of parents.

There are also general rules that establish the obligation to denounce and the obligation to issue a report for public officials and healthcare professionals who come to learn of a case of FGM. Although the Italian law on FGM is considered a good practice at international level (UN), it is ambivalent because, on the one hand, it seems to work through awareness raising, training and dialogue, and, on the other, it activates a particularly serious and automatic criminal penalty mechanism. For this reason, the law has been and is still the subject of discussions in jurisprudence, among the professionals of various sectors and within the framework of the associations/voluntary sector.

The result of this original contradiction is that the criminal provisions are seldom applied. From 2006 to date, there has been only one reported case of the crime of FGM, the proceedings for which ended with an acquittal during the appeal.

The reasons for the scarcity of reports (and therefore of criminal proceedings) include the reluctance of professionals in the social and health sector to report and/or denounce cases of FGM or FGM risk because they consider the criminal penalties that the parents could face particularly serious and not in line with the best interests of the child, especially with regard to the possible suspension of parental responsibility.

An additional concern of social and healthcare personnel is that taking these measures against parents, due to their report, could endanger the relationship of trust between the physician and the parents a situation that is in itself the basis of the path of information, awareness and therefore prevention of the practice on daughters.

This reluctance is evident in the lack of reporting and prevents, along with other factors, the phenomenon being uncovered. This is considered to be one of the reasons why, more than 10 years after the entry into force of the law, there has been only one case of criminal proceedings. It is therefore appropriate to discuss the need to revise the current legislation by establishing a Commission to evaluate the application of criminal provisions on FGM, and their adequacy, and its effectiveness in punishing the perpetrators of FGM. The Commission should address the refinancing of prevention and information activities under the law, the toll-free number (e.g., to include FGM in the general line of support on gender-based violence, therefore making it an easily accessible multilingual/multimedia tool), the criminal law aspects and the automatic nature of the related penalties. The Commission should involve the various NGOs, legal experts, legal associations, guardianship associations and representatives of communities that practice FGM in view of implementing integrated policies.

The agreement between the State and the Regions of 6 December 2012 concerning the "Criteria for the allocation of resources, the aims, the implementation methods and the monitoring of the system of measures to be developed to prevent and counter female genital mutilation", which was reached by the Conference between the State and the Regions, and concerns the system of measures to be developed to prevent and counter the phenomenon of female genital mutilation as per article 3, paragraph 1 of Law 7/2006, also allocated the funds of the DEO to those Regions that have adopted local intervention projects.

The lack of accountability and difficulties in achieving coordination between relevant players have made it extremely hard to monitor the funds spent, and does not permit a comprehensive picture of the activities carried out throughout the country. Nor does it encourage the development of tools at regional levels or facilitate the sharing of lessons learned across the country at the national level.

The toll-free number established by law and managed by the State Police was set up in 2009. This service has received few reports and has not been active for years, although it is still available online, though remains accessible solely in the Italian language.

Although services for the care of women and girls who have suffered FGM are in place, they are mostly focused on the health-related aspects of FGM. There is no coordination and communication between the local authorities responsible for provision of multisectoral services, and these services are scattered randomly in the regions. This means that some areas are without virtual services even, and others lack basic services. This results in a lack of homogeneity (at national level) and a failure to provide service continuity to these women and girls.

The absence of coordination of policies focused on prevention does not facilitate awareness of the phenomenon, its traceability and, of course, its emergence.

**DATA** It has been estimated that about 57,000 foreign women and girls aged 15 to 49 with FGM were living in Italy in 2010, 60 per cent who came from Nigeria and Egypt. As for the estimation of girls at risk of FGM, it will be necessary to wait for the publication of the research conducted by the EIGE (European Institute for Gender Equality), scheduled for June 2018.

For the future, it should be noted that the Convention between ISTAT (the Italian Institute of Statistics) and the DEO (2017-2020) to conduct a third survey entirely dedicated to gender violence will also collect data on FGM.

#### **FGM AND INTERNATIONAL PROTECTION**

FGM is also relevant for applications for international protection. Applications based on FGM are expressly covered by Legislative Decree 251/2007, which also includes "acts of physical or mental violence including sexual violence" and "acts against a particular social group" among the acts of persecution (see commentary on Articles 59-60-61 Migration and Asylum of this Report).

The 2017-2020 Plan highlights the need for training public and private sector workers to raise awareness about FGM and offer support to survivors of violence/FGM and girls at risk. It also places specific emphasis on the issue of FGM in the reception system for refugees and asylum seekers.

#### **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*53. The Committee urges the State party to:*

*(e) ensure the full implementation of legislation prohibiting female genital mutilation, including the prosecution of perpetrators, with a view to eliminating this harmful practice;*

#### **RECOMMENDATIONS**

1. It is necessary to conduct a survey to explore/assess what has been achieved at regional area with access to documents relating to best practices.
2. Training on sexual and gender-based violence (including FGM) of staff belonging to different professions (including schools) must be ensured in a homogeneous manner throughout the country and a practical FGM risk assessment tool must be developed nationwide in order to support professionals in preventing the phenomenon and

effectively protecting and supporting women and girls who are victims of FGM or are at risk of FGM.

3. It is recommended that services (such as Regional FGM Centres) be institutionalised within existing facilities (with regular funding), including prevention and protection services which should be integrated with other services on sexual and gender-based violence into a reference system (health, education, social, judicial, and migrant reception system).
4. In the light of the poor application of the provision under criminal law, provide for a participatory process of revision of current legislation, establishing an Evaluation Commission on the application of existing criminal provisions on FGM, involving the various NGOs, legal experts, associations of legal experts, guardianship associations, and the representatives of communities that practice FGM.

#### *Article 40 – Sexual harassment*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

The Italian legal system does not provide for a specific criminal offence of sexual harassment, not even with regard to harassment in the context of an employment relationship, where the victim is vulnerable to blackmail, and where harassment can more easily take the form of a real abuse of power.

In relation to its manifestations, the conduct of harassment can be traced back to other types of crime that, however, do not cover the entire spectrum covered by article 40. It should be noted that:

- In the case of physical contact involving genital areas or in any case erogenous zones, harassment can be subsumed under the crime of sexual violence referred to in article 609-*bis et seq.* of the Criminal Code, which, however, does not include touching other parts of the body (e.g., knee, arm, etc.), which may also be unwanted;
- Verbal harassment – this was previously attributable to the offence of insulting behaviour, now decriminalised (article 594 of the Criminal Code) and may be the subject of a civil lawsuit for damages. This does not, however, provide for a facilitated legal aid scheme, the outcome of which can be applied, in addition to a sentence to pay damages, also a penalty under civil law (articles 4 *et seq.* of Legislative Decree no. 7 of 15 January 2016);
- The crime of duress occurs only when harassment is characterised by the use of violence or threats (Article 610 of the Criminal Code);
- Finally, with reference to the conduct of continuous and protracted harassment, in particular in the workplace, the types of acts of persecution (Article 612-bis of the Criminal Code) and of mistreatment of family members and cohabitants (Article 572 of the Criminal Code) identified only partially coincide with the provision of Article 40. In fact, the former rule does not specifically refer to sexual harassment, aimed at creating a hostile climate of intimidation and degradation with the aim or effect of violating the dignity of the victim, while the latter is considered applicable by case law only within the family or, in any case, when the context in which it occurs is attributable to or similar to a family environment.

In view of the absence of a specific legislative provision and the shortcomings of existing laws, whether criminal or civil, to cover all cases of unwanted sexual harassment and therefore through its absence enabling the creation of a hostile, humiliating and degrading climate where the abuse of power can occur, especially in the workplace, there are extreme difficulties in uncovering the nature and extent of the phenomenon. This has been demonstrated by recent statistical surveys<sup>96</sup>.

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<sup>96</sup> ISTAT survey published on 13 February 2018, <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/violenza-sul-luogo-di-lavoro>, also taken up by *Parliamentary Inquiry Committee on femicide and all forms of*

ISTAT data, based on the survey undertaken in the years 2015-2016, show that there are 1,404,000 women who have been sexually blackmailed during their working life (accounting for 8.9% of current or past female workers, including women seeking employment). The data also show that, when a woman suffers violence, in 80.9% of cases they do not talk to anyone and only 0.7% turned to the police. Sexual blackmail occurs at a time when women are in greatest difficulty and are suffering from the asymmetrical situation that exists, especially in traditionally male employment sectors<sup>97</sup>.

In relation to specific work contexts, Confindustria (the Italian employers' federation) and the trade unions CGIL, CISL and UIL, implemented the "Framework agreement on harassment and violence in the workplace" in 26 April 2007<sup>98</sup>. It is an agreement that mentions the issue of violence and harassment, but does so without any reference to sexual violence and/or gender-based violence. While it constitutes an important first step, it does not satisfy the need to adopt more specific and appropriate instruments aimed at the effective application of the I.C..

## RECOMMENDATIONS

1. It is necessary to provide, first of all, for a specific legislative provision which transposes the content of Article 40 of the I.C. with regard to harassment at work and which also provides for a form of responsibility of the employer as the guarantor of the proper conduct of employees.
2. It is also necessary to provide for all measures to uncover the phenomenon of harassment in the workplace and encourage the adoption of specific agreements in the private sector as soon as possible.

## CHAPTER VI INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES

### *Article 49 – General obligations*

#### THE ITALIAN SITUATION AND CRITICAL ISSUES

With Law 119/2013, Italy has provided a fast track for the creation of roles and management of criminal proceedings relating to the crimes of mistreatment, acts of persecution and sexual violence, but has not provided for any acceleration for the time of investigation for which the time limit of 18 months applies (two years for crimes of aggravated sexual violence, sexual violence on minors or gang rape). Furthermore, there is no provision for further instances (appeal or cassation).

In many public prosecutors' offices, specific memoranda of understanding have been signed between the judiciary, law enforcement, anti-violence centres and hospital emergency units so that the registration of indictments falling within the scope of the I.C. (mistreatment in the family, sexual offences, acts of persecution) can take place "with priority" within twenty-four hours.

In practice, however, too much time is still needed for investigations to be carried out and the speed with which first instance trials are held varies from one location to another, and there are delays in setting hearings in appeal proceedings. Although the Femicide Committee<sup>99</sup> has welcomed the completion of many proceedings within 3 years of registration (but the data are

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*gender-based violence,* adopted on 6 February 2018, <http://www.senato.it/service/PDF/PDFServer/BGT/1066658.pdf>, and reported in the Femicide Focus of the Senate Impact Assessment Office UVI\_Focus\_femminicidio\_sintesi

<sup>97</sup> See *Parliamentary Inquiry Committee on femicide and all forms of gender-based violence*, adopted on 6 February 2018, pp. 35-36, <http://www.senato.it/service/PDF/PDFServer/BGT/1066658.pdf>

<sup>98</sup> [http://www.cgil.it/admin\\_nv47t8g34/wp-content/uploads/2016/01/Accordo\\_su\\_molestie\\_e\\_violenza\\_luoghi\\_lavoro\\_25.01.2016.pdf](http://www.cgil.it/admin_nv47t8g34/wp-content/uploads/2016/01/Accordo_su_molestie_e_violenza_luoghi_lavoro_25.01.2016.pdf)

<sup>99</sup> Senate Committee on Femicide, p. 165

fragmented, as admitted by the very commission), the application data and experience of many lawyers show a wide array of differences in application (by way of example: criminal proceedings for sexual violence registered at the Prosecutor's Office in Monza in December 2013, R.G.N.R. no. 15466/2013, sentence of first instance no. 922/2016 issued on 8 March 2016, appeal not yet set; criminal proceedings for sexual violence sentence of the Court of Florence of 13 September 2011 appeal set for 5 March 2018, criminal proceedings for mistreatment Court of Pistoia ruling of first instance of 15 June 2010 declared statute-barred in appeal by the Court of Appeal of Florence with judgment of 4 October 2013 and much more can be cited).

There have also been cases of crimes of sexual violence on minors (Turin case) for which the statute of limitation has lapsed causing a great stir and resulting in inspections by the Ministry of Justice. There do not seem to be any disciplinary proceedings or penalties in place for the other usual cases of delay.

Finally, the rate of dismissal is still too high, even with regard to the reports/lawsuits for serious crimes, such as mistreatment and sexual violence, as is the underestimation of sentinel crimes of battery, minor injuries, and threats, which are often considered minor offences and are referred to the Justice of the Peace, therefore resulting in much longer court proceedings and time-barred cases<sup>100</sup>. The data relating to dismissed cases is particularly heterogeneous in the different Court of Appeal districts, once again highlighting the different sensitivity in different geographical areas.<sup>101</sup>

#### *Article 50 – Immediate response, prevention and protection*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

There are insufficient numbers of trained staff in the judiciary and judicial police, including the female staff who needed to enable victims of violence, particularly sexual violence, to report the facts more easily, which means that it is not possible to establish the relationship of trust as required by the legislation.

There is an absence of staff within the judiciary and judicial police forces trained to listen to women who have sensorial or intellectual disabilities and who have been subjected to violence, or to provide appropriate communication instruments for these women other than verbal language.

The issue of training all judicial staff (lawyers, magistrates, judicial police officers) is strategic and essential to enable the practical application of the available rules. Much still needs to be done in this regard. As already mentioned in the commentary to chapter 15, there is a lack of structural courses on male violence against women, notwithstanding the fact that the magistrates themselves have asked for more training courses on the subject, both at the level of the Advanced School for Magistrates and at the level of decentralised training<sup>102</sup>.

The interaction between judicial and criminal police bodies and anti-violence centres is still extremely limited, and there do not seem to be any joint committees (Magistrates, Police, medical personnel, anti-violence centres, local authorities) for the examination and evaluation of the most serious cases of violence, or to examine the gaps and deal with the shortcomings of the system. Inter-institutional liaison depends to a large extent on local initiatives and is not systematic or structured.

#### *Article 51 – Risk assessment and risk management*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

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<sup>100</sup> Pecorella Claudia and Farina Patrizia, “La risposta penale alla violenza domestica: un’indagine sulla prassi del Tribunale di Milano in materia di maltrattamenti contro familiari e conviventi (article 572 of Criminal Proc.), in Contemporary Criminal Law

<sup>101</sup> Senate Committee on Femicide, 2018, p. 161

<sup>102</sup> Senate Committee on Femicide, p. 366

In the Italian system, the victim's interest in safety is seldom at the centre of judicial activity, which instead is more centred on respect for the accused's right of defence. This fact can be observed in situations where the judiciary has difficulty in issuing orders for protection/precautionary measures, even when those orders are not particularly burdensome (removal from the family household, prohibition of approaching places frequented by the victim).

The risk assessment is carried out solely by the individual magistrate of the Public Prosecutor's Office or the judicial police officer who reports to him or her, and these officials do not usually consider relevant literature on the subject, nor do they access assessment and self-assessment tools such as SARA tests and others. There is no institutionalized and organized procedure that provides for bringing together all the representatives of public and private bodies involved in the execution of the Convention (judges, lawyers, law enforcement, doctors, anti-violence centres, local authorities) for the assessment and management of risk and for support to victims. There is, however, sufficient attention to the presence of firearms.

Only rarely are advance hearings conducted to gather evidence in a protected manner as per articles 392 and 398 paragraph 5-bis of the Criminal Procedural Code. The condition of particular vulnerability, introduced following the implementation of victims' directive 2012/29/EU by the European Parliament and Council with law 212/2015, whereby the condition of disability is identified as a restrictive condition which damages the dignity and value of the person as a "state of infirmity or psychological deficiency", has yet to be delineated and set out in precise terms by jurisprudence. The same applies for the protected methods needing to be adopted, whilst the precautions given for their protection are only applied in a residual manner.

The Superior Council of Magistracy (CSM), in its very recent draft of the "Resolution on the guidelines on the organization and good practices for the management of proceedings relating to gender and domestic violence crimes", has expressly indicated the need to enhance those tools, such as the evidence gathering procedure, both to avoid the secondary victimisation of the injured party and to allow a faster hearing<sup>103</sup>.

#### *Article 52 – Emergency barring orders*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

With Law 119/2013, Italy has provided, under article 380, letter I-ter of the Code of Criminal Procedure, for mandatory arrest *in flagrante delicto* for the crime of mistreatment in the family and acts of persecution and under article 384-bis for the measure of emergency removal from the family household for those caught in the act of committing various crimes, including serious injuries and serious threats, when there is a serious and current danger to the life or physical and psychological integrity of the injured person. Mandatory arrest *in flagrante delicto* is difficult to apply due to the continuous nature of the crime that does not allow integrating criminal conduct with the occurrence of a single episode of maltreatment, though serious. Emergency removal from the family household is also allowed only for injuries involving more than 20 days of illness or serious threats and with the use of weapons. It is seldom enforced by the police.

#### *Article 53 – Restraining or protection orders*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

The implementation of Article 53 occurs through the introduction of the protection measures provided for by the Civil Code and the precautionary measures in the criminal proceedings (see

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<sup>103</sup> This is the programmatic document presented by the CSM Seventh Commission at the conference held in Rome, at the Biblioteca Nazionale Centrale on 12 and 13 April 2018 during the study meeting on the issue of "Gender Violence".

also the commentary on Article 29). Under Italian criminal law, a protective measure is requested by the Public Prosecutor and issued by a judge. The injured party can only request the Public Prosecutor to lodge a request with the judge.

In judicial practice more generally, there is excessive mistrust and a rather restrictive attitude in both criminal and civil case law in issuing the protection measures provided for, especially in the absence of physical injury. Application often still depends to a considerable extent on the sensitivity of the individual judges, so that the use of protective measures by the Italian judiciary has an uneven trend.

Moreover, it still takes too much time (1, 2 months from the request, and at times even longer) and there is no obligation for the magistrate of the Public Prosecutor's Office to reply in writing to the victim in the case of a refusal to solicit the request for a precautionary measure. The investigations necessary for the decision on issuing a precautionary measure should be carried out expeditiously. No time limits are currently set for the Public Prosecutor or the Preliminary Investigation Judge. A rare and exceptional application is found in the provision of alimony provided for by article 282-bis, paragraph 3, of the Code of Criminal Procedure.

The violation of the precautionary measure may lead, on the assessment of the Judge, to the aggravation of the measure with another more stringent one (article 276 of the Code of Criminal Procedure) but the reporting mechanism is not always easy and immediate, especially when the injured person lacks counsel. The violation of the measure is NOT automatically followed by a penalty or an aggravation thereof, as it must appear as "serious". The Judicial Police and Law Enforcement officers are tasked with monitoring compliance with the measures and often underestimate violations and minimise them without, therefore, bringing them to the attention of the judge. It may also be the case that the reports do not reach the person in charge of control, with a consequent scattering of information.<sup>104</sup>

#### *Article 54 – Investigation and evidence*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

In criminal proceedings, under article 194, paragraph 2, of the Code of Criminal Procedure, testimony on facts which serve to define the personality of the person injured by the crime is not permitted, unless the act committed by the accused must be evaluated in relation to the behaviour of that person. This requirement leaves ample space to the counsel of defendants to motivate their requests, even though these are invasive, inappropriate and damaging to the dignity of the injured persons, and to the discretionary assessment of judges. Article 472, paragraph 3-*bis* of the Code of Criminal Procedure further restricts the possibility to ask questions about the private life or sexuality of the injured person when pursuing sexual offences.

The rules in question are without procedural penalty and depend to a large extent on the sensitivity and training of the Judge in gender violence matters. Recently, thanks to the media attention raised by some judicial cases in the news<sup>105</sup>, the issue seems to be back on the agenda, but there are no specific training and awareness measures at the moment. In sexual crimes and more generally in crimes concerning the forms of violence covered by the I.C. (including FGM), the recurrence of gender stereotypes and false myths are particularly pervasive among all legal professionals (lawyers, magistrates and judicial police), to the point of representing a serious obstacle to the judicial investigation of episodes of violence and its emergence in general.

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<sup>104</sup> A tragic example is the Anna Rosa Fontana's case, who was murdered by her partner after she had repeatedly called police <http://www.rainews.it/dl/rainews/media/Matera-Anna-Rosa-Fontana-uccisa-da-ex-compagno-le-telefonate-delle-vane-richieste-di-aiuto-a-forze-ordine-a448c72c-0462-425d-a8a7-f6db924bec97.html> It is a real and specific case perfectly indicating operational modalities.

<sup>105</sup> [http://27esimaora.corriere.it/18\\_febbraio\\_13/trova-sexy-divise-domande-choc-aula-due-ragazze-stuprate-a2853158-1103-11e8-ac74-6fc70a32f18b.shtml](http://27esimaora.corriere.it/18_febbraio_13/trova-sexy-divise-domande-choc-aula-due-ragazze-stuprate-a2853158-1103-11e8-ac74-6fc70a32f18b.shtml)



Despite the rules mentioned above and the Code of Legal Ethics<sup>106</sup> requiring lawyers to avoid questions and methods of examination that inflict further humiliation and moral judgment on the victim's experience, when not necessary, the judiciary, when it is not itself the author of these questions, does not always take steps to prevent them from being posed. This means that the courtroom places for women where fallacious stereotypes and secondary victimisation are replicated.

It is critical that extensive training on this point is undertaken, including awareness-raising, given the positions and attitudes of lawyers themselves<sup>107</sup>.

#### *Article 55 – Ex parte and ex officio proceedings*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Under Italian law, all the offences mentioned may be prosecuted *ex officio* or on the basis of a complaint that cannot be remitted. It is provided by law that the hearing of vulnerable victims is carried out in a protected way during the trial, before the Preliminary Investigation Judge, before the Judicial Police with the help of a psychologist/psychiatrist appointed by the Public Prosecutor, and before the Public Prosecutor.

However, the implementation of the law is undermined by architectural shortcomings in court buildings and varies therefore across Italy's different regions and judicial districts. There is also a tendency to consider the vulnerable victim as a child, with cases being recorded in which the injured parties are listened to in the rooms set aside for the evidence gathering proceedings involving minors that are furnished for children. The very presence of an expert, limited almost solely to the presence of psychologists, often translates into an assessment of the victim's reliability, rather than into emotional support for the victim. Furthermore, there is no guarantee that the appointed expert will have specific training. Italian legislation does not provide for a victim to be assisted by a lawyer or other representative of a victim's organisation during the hearing in the investigation stage.

#### *Article 56 – Measures of protection*

##### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

The Code of Criminal Procedure sets out in article 90-*ter* the right of persons who are victims of offences committed with violence against them and who so request to be informed, with the assistance of the judicial police, of release orders, of orders to terminate detention measures for security reasons and of the escape of the defendant.

Before proceeding with the discussion on the rights of the injured person, it should be pointed out that the law, and throughout the Code of Criminal Procedure, speaks of crimes committed with violence against the person but does not mention gender violence or domestic violence. The intervention of the Joint Session of the Court of Cassation was necessary in order to state that the rules apply to victims of stalking and in general to victims of gender-based violence as defined by the I.C. and Directive 2012/29/EU<sup>108</sup>. This is particularly important in order to understand that the intense regulatory activity that has taken place since 2009 is not always coordinated and that the legislative technique is not always characterised by uniformity and clarity. Pursuant to article 90-*bis* of the Code of Criminal Procedure, injured parties shall be entitled, from the time they first contact the prosecuting authority, to receive information in a language which they understand, on the right to receive information on the stage reached in the proceedings, to receive legal advice, to request protective measures, to apply authorities for the

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<sup>106</sup> Article 9 of the Code of Legal Ethics enshrines the duty of probity, dignity and decorum for lawyers.

<sup>107</sup> <http://www.ordineavvocatifirenze.eu/wp-content/uploads/2018/03/2018-02-21-del.-8-articoli-apparsi-Corriere-della-Sera-.pdf>

<sup>108</sup> Cass., Joint Session, sent. no. 10959 29 January 2016 (dep. 16.03.2016), Pres. Canzio, Rapp. Bianchi.

protection of rights, to claim damages and to have access to free legal aid. They are also entitled to receive information on health facilities, family homes and anti-violence centres (see commentary on article 19) in the area. In reality, information on the rights of a person injured by a crime is not provided in a comprehensible and above all usable manner, since there is NO indication of who to contact to receive information or how to actually exercise these rights. At the time of the first contact with judicial authorities, victims are given a sheet that slavishly reproduces the legal text regarding the rights of an injured person, without, for example, being clearly asked to express the will to be informed in the case of release for reasons other than the request of the suspect/defendant (which is provided only with a specific request to be informed). Law 119/2013 also introduced, for crimes committed with violence against a person, information obligations relating to the request for modification of the precautionary measure, the right to speak with the judge, and information in the event of modification or revocation thereof. However, the obligation to provide information is not exhaustive. For example, there is a lack of information on the order for custody in prison and house arrest. Information on the lifting of measures should also be extended to cover all precautionary measures, including the obligation to stay and prohibition of residence, as well as prohibition measures, such as suspension of parental responsibility. There is no information on the termination of the measures due to the expiry of the maximum period.

Moreover, in practice, the obligation to provide information about the request for modification of the precautionary measure is not always complied with and, despite the fact that the failure to provide information to the injured party is punished with the inadmissibility of the request, the only instrument that can be used to detect it is the appeal to the Court of Cassation by the counsel of the injured party. Such an appeal is time-consuming and does not suspend the effectiveness of any revocation/amendment of the measure.

Furthermore, and with regard to precautionary measures, no communication is provided for with regard to their review, nor any possibility of participating in the hearing before the judicial review court or the Court of Cassation. At this stage, the offended person is not informed in any way. It would be possible for her to communicate through briefs, but it is difficult to do so without being informed. This is a particularly delicate step because the review could lead to the modification or revocation of the measure and, for the same reason, should provide for information and the possibility to intervene as provided for in article 299 of the Code of Criminal Procedure.

No information to the injured party who is the victim of the crime is provided for the phase following the sentence, and in particular with reference to the Surveillance Court, where admission to alternative measures to detention is decided. This is a very important shortcoming. It is important for the Court to be aware of the specific needs of the injured person and any conduct subsequent to the offence and/or conviction.

Respect for the victim's privacy and protection against unnecessary encounters with the perpetrator is disregarded due to shortcomings in the design of judicial buildings. In many cases, there is no separate room where one can wait for one's turn, and specialised structures are not always available. If they are available, they are sometimes far from the court or in any case not easily accessible. The Code of Criminal Procedure does not provide for the possibility of testifying from a remote location using appropriate technology. The CSM has again intervened (after its deliberation of 8th of July 2009 and 12th of March 2014), to promote operative solutions and adequate procedures for efficient interventions according to international standards for the preventive protection of the victim; therefore the VII Commission has started to elaborate guidelines and to disseminate good practices for violence proceedings related to gender-based violence<sup>109</sup>, reminding magistrates of the “right to protection” of victims through “special measures” referred to in article 23 of the I.C., in order to avoid visual contact with the offender, and to use appropriate means to protect them from the risk of emotional and psychological

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<sup>109</sup> [http://www.dirittoegiustizia.it/news/15/0000089281/Dal\\_CSM\\_le\\_linee\\_guida\\_per\\_la\\_trattazione\\_dei\\_procedimenti\\_relativi\\_a\\_reati\\_di\\_violenza\\_di\\_genere\\_e\\_domestica.html](http://www.dirittoegiustizia.it/news/15/0000089281/Dal_CSM_le_linee_guida_per_la_trattazione_dei_procedimenti_relativi_a_reati_di_violenza_di_genere_e_domestica.html)

harm. Among the means considered appropriate are "particular communication technologies" which, in Italian courts, are ignored, or, at best, result in the preparation of screens designed to prevent a victim from seeing the perpetrator of the crime if he is present at the testimony. There is no control over the efficiency of the interpreters who are seldom available at the initial stage of lodging a complaint.

#### **2017 RECOMMENDATIONS CEDAW COMMITTEE**

*18. The Committee recommends that the State party:*

*(c) Accord priority to measures to expedite legal proceedings and improve the treatment of victims of gender-based violence against women and to eliminate gender stereotyping within the judiciary;*

*28. (b) Evaluate the response of the police and the judiciary to complaints of sexual crimes and introduce mandatory capacity-building for judges, prosecutors, police officers and other law enforcement officers on the strict application of criminal law provisions on gender-based violence against women and on gender-sensitive procedures for interviewing women who are victims of violence;*

#### **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

*68. The legal framework largely provides for sufficient protection for violence against women. However, it is characterized by fragmentation, inadequate punishment of perpetrators and lack of effective redress for women victims of violence. These factors contribute to the silencing and invisibility surrounding violence against women, its causes and consequences.*

*69. Victims of violence and representatives of civil society with whom the Special Rapporteur met highlighted the lengthy criminal procedure, the non-respect of civil protection measures and the inadequate pecuniary and detention sanctions against perpetrators, which weakened the protective nature of that measure. Moreover, the lengthy delays in the justice system may also impact the outcome of a case. The prescription law allows for a matter to be dropped due to delays in the system. In addition, the lack of coordination between judges of the civil, criminal and juvenile benches when handling protective measures does sometimes result in conflicting judgments.*

*94. The Government should:*

*(c) Adopt a specific law on violence against women to address the current fragmentation which is occurring in practice due to the interpretation and implementation of the civil, criminal and procedures codes;*

*(d) Address the legal gap in the areas of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;*

#### **RECOMMENDATIONS**

1. There is a need to provide for institutionalised and organised procedures for the consultation of all operators involved in the application of the I.C. in order to allow for timely and effective risk assessment, also for women with disabilities and major communication problems.
2. Need to expedite investigations with a view to the prompt and effective application of protective measures.
3. Need for specific and specialised training for all professionals (judiciary, law enforcement, psychologists, lawyers) on the contents of the I.C., including training to eliminate gender stereotypes in the judiciary which hinder access to justice and training for the use of appropriate alternative communication skills and instruments.
4. Need to extend the right to information to the injured party in all cases of release, amendment or expiry of the measure, including its review process, and to extend information to the injured party also in the procedure for enforcing the sentence.

#### *Article 57 – Legal aid*

#### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Italian legislation defines and regulates the cases for access to free legal aid in criminal and civil proceedings.

In criminal proceedings, Law 119/2013 extended the admission to free legal aid to all persons injured by the crimes of stalking, maltreatment and sexual violence regardless of their income.

The provision was not immediately and uniformly accepted and in many Courts, Judges continued to reject the requests, openly displaying a cultural resistance to positive actions adopted to facilitate the uncovering of cases of male violence against women and to alleviate forms of secondary victimisation. It was only last year that the Court of Cassation handed down its judgment, clarifying the nature and meaning of the legal provision and, it is to be hoped, laying the foundations for a more uniform application of access to free legal aid.

With regard to the actual functioning of the framework in question, it must be said that structural problems and paradoxical consequences persist. Indeed, in the case of free legal aid, the lawyer's fee is quantified and settled by the Judge on the basis of ministerial parameters, and reduced by one third. Settlement by judges too often reflects the devaluation of the highly skilled and qualified work of lawyers assisting victims of gender-based violence, with accompanying offensive settlements. In most cases, Judges include the hypothesis of defending the victim in cases of gender violence as "cases of reduced difficulty" and therefore apply minimum parameters. Out-of-pocket expenses are not recognised and payment is only made at the end of the proceedings, which in some cases can occur more than 4 years after the professional service is rendered. The paradoxical effect of these provisions is that any convicted defendant benefits from a clearly privileged treatment, and paying only paltry sums for the victim's legal expenses.

In Civil Law, on the other hand, legal aid does not provide for any derogation in cases of violence covered by the I.C.. The victim can therefore apply for free legal aid only if she has an income of less than €11,493.82. The income of the other members of the family (with the exception of the husband or partner) is also included in this calculation. Many women slightly exceed this income threshold, or have to include their children's or parents' income, thereby remaining excluded from free legal aid and subsequently penalised severely by the high costs of the legal proceedings. The payment of the compensation in civil proceedings is, if possible, even more humiliating than in criminal proceedings. In these proceedings, compensation is calculated starting from the minimum rate provided for by the ministerial decree, and reduced by half. In addition to this regulatory provision, there is the disparaging vision of some Judges who consider separations as simple issues. It is not unusual for the fee for legal aid for a separation to be settled with a few hundred euros against a cost in the market or even only in official fee lists of thousands of euros.

If the lawyers of anti-violence centres lend themselves to guaranteeing the representation and defence of women even in the face of the evident contempt deriving from free legal aid, the same does not apply to consultants. In civil proceedings for separations or regulation of parental relationships, Judges increasingly rely on the support of technical experts, technical advisors, psychologists, psychiatrists, or criminologists, who however do not agree to work in a system of free legal aid. The consequence is twofold: despite admission to free legal aid, the court consultant's fee is paid by both parties (even if not requested by them) and the party receiving free legal aid is unlikely to find any consultant willing to take up the role of expert for the injured party.

These mechanisms are certainly not in line with the remarks in the explanatory report according to which court cases can be very complex, and certainly cannot be considered a tool to ensure the effectiveness of remedies. The burden of defence is simply shifted from the victim to the counsel. What began as a tool to ensure the effectiveness of defence and access to justice has become a limitation that devalues the defence of victims falling among the cases covered by the I.C..

## **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

*94. The Government should:*

*(f) Ensure the provision of quality, State-sponsored legal aid to women victims of violence as envisaged in the constitution and Law No. 154/200 on measures against violence in family relations;*

## **RECOMMENDATIONS**

The establishment of an independent fund is urgently recommended in order to ensure that women in situations of violence have greater access to justice, while at the same time raising the income threshold for access to free legal aid, and calculating only a woman's income.

## CHAPTER VII – MIGRATION AND ASYLUM

### *Article 59 – Residence status*

#### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Law 119/2013 introduced article 18-*bis* in the Consolidated Act on Immigration entitled "residence permit for victims of domestic violence". This Article provides that where law enforcement authorities ascertain that a situation of violence exists against a foreign national, threatening his or her safety by virtue of the statements made or removing him or her from the situation of domestic violence, a residence permit is to be issued for humanitarian reasons 'to enable the victim to flee violence'. The permit is valid for one year and is renewable if the dangerous conditions that allowed it to be issued persist. This permit can be issued either following reports to the police or on the basis of reports from social services "specialised in assisting victims of violence".

The issue of the residence permit is conditional on the existence of "a real and present danger to her safety", which makes the granting of the residence permit dependent on the recognition of violence by the prosecuting authority and the existence of a high-risk situation. Although the provision includes a broad definition of domestic violence, which also includes forms of psychological and economic violence, the latter are difficult to recognise and are seldom deemed capable of causing a "real and present danger to the victim's safety". The very definition of domestic violence offered, limited to "non-routine" acts, could paradoxically exclude individual cases of particularly serious violence, but which do not fall within the definition of "non-routine", such as attempted murder or very serious injuries.

In relation to the request for the residence permit due to prevalence of violence as stated in the report of specialised social services (and therefore without the initiation of a criminal procedure), the rule has not been effectively implemented. There are no social services offices that provide for a required specialization in violence against women, and there is no explicit possibility of handing this function to the anti-violence centres that are scattered throughout the territories, and that come into contact with women and can offer a supportive relationship that assists them in freeing themselves from violence.

Since the introduction of the new law in 2013, only 111 residence permits have been granted in accordance with article 18-*bis*, in total around 30 a year<sup>110</sup>, and only in an uneven way throughout Italy. This is a figure that highlights the inadequacy of the rule, at least in its concrete application. Suffice it to say that according to the data published by ISTAT for the year 2013, the year of the introduction of the residence permit under discussion, 4,515 crimes have been reported to the police and judicial authorities for beatings, stalking and sexual violence against foreign women (a figure that concerns both the reports made by the women themselves and crimes independently ascertained by the police)<sup>111</sup>.

There is also a risk that women applying for the permit in accordance with article 18-*bis* are even accused of exploiting the accusation in order to obtain a residence permit, demonstrating a

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<sup>110</sup> Data provided by Minister of the Interior Minniti during the hearing held before the Senate Commission on Femicide, p. 19.

[http://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/femminicidio/stenografici/RES\\_N\\_27.pdf](http://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/femminicidio/stenografici/RES_N_27.pdf)

<sup>111</sup> <https://www.istat.it/it/violenza-sulle-donne/il-percorso-giudiziario/denunce>

<https://www.istat.it/it/files//2017/11/dati-2009-2013.xlsx>; Complaints - Police Forces, Tables 2009-2013;

seriously stereotyped view of the reports and therefore hindering the process to uncover evidence of violence<sup>112</sup>.

The poor dissemination of information on the possibility of access to this residence permit, both among law enforcement and women victims of violence, greatly weakens application of this instrument.

The lack of information and protection is even more serious when one considers how difficult it is for migrant women in general to meet or maintain an income, or address the housing and employment requirements necessary to obtain an autonomous residence permit. A residence permit for work purposes is issued only if it is proven that the person concerned has a permanent job and an adequate income to support herself and any dependent family members, and that she has adequate accommodation<sup>113</sup>. These parameters are difficult for many migrant women to reach because of the greater economic precariousness of their situations<sup>114</sup>. The difficulties they face in seeking employment in Italy are well known. The widespread racism of employers or the practice of undeclared employment contracts, as well as language barriers that can be the result of the isolation imposed by the violent partner. Structural conditions render migrant women subject to multiple forms of social vulnerability and hinder the respect of their fundamental rights, including the right to live free from violence.

With separation (also *de facto*) from the violent partner, obtaining a residence permit as provided for by article 18-*bis* for "violence", becomes even more difficult, if not impossible. The characteristics of urgency and risks foreseen are no longer recognised. The authorities and law enforcement agencies often believe that once separation and therefore the physical and material autonomy from the violent partner has been obtained, a woman is no longer at risk because she is physically separated from the abuser. Article 18-*bis*, in particular, does not expressly recognise health problems or physical damage related to the maltreatment suffered as possible requirements for the issuance of a residence permit. This is in violation of the provisions of the I.C. that, under article 59, 3b, provides for issue of the permit "owing to their personal situation".

Throughout Italy, it is apparent that at all levels of society there is little understanding or recognition of the dynamics of violence, a situation that implies that the many forms of psychological violence and control by partners or former partners are not considered as conditions of risk and as such do not justify the issue and/or renewal of the permit pursuant to article 18-*bis*. This demonstrates that the current instrument is insufficient (either due to poor application, or to an overly restrictive interpretation) and is incapable of supporting an effective ways out of violence for these women<sup>115</sup>.

Finally, it should be added that Article 18-*bis*, contrary to the recommendations of the Convention, does not take into account cases in which there is a risk of violence in the countries of origin of women by their families of origin (or that of their spouse) as a result of the decision to leave and/or report their spouse. This produces a state of deep physical, psychological and social vulnerability, because if a woman is expelled from Italy, she often has no other option but to return to her country of origin, in which case she faces the risk of further violence.

Dependent conditions and legal insecurity prevent women from having a life free of violence in the country to which they migrate<sup>116</sup>, as they create a situation of vulnerability that ends up being reiterated for several years, forcing migrant women to live in a state of prolonged uncertainty and insecurity.

*Protection for women who have been the subject of forced marriage (59, fourth paragraph)*

<sup>112</sup> Cass., Criminal Section VI, no. 16498/17 dated 1.03.2017, filed on 31.03.2017

<sup>113</sup> Law 25 luglio 1998, no. 286. Consolidated text of provisions governing immigration and the status of foreign nationals, <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286>.

<sup>114</sup> Italian Institute of Statistics - Istat. Come cambia la vita delle donne. 2004-2014 (How women's lives change), <https://www.istat.it/it/archivio/176768>.

<sup>115</sup> Francesca Garisto and Teresa Manente 2015, <https://www.direcontrolavioenza.it/permesso-di-soggiorno-per-le-vittime-di-violenza-domestica/>

<sup>116</sup> Della Rocca, M. (2018). The legal barriers affecting undocumented women in Italy. *Fempower*, 28 (1/2017). Vienna: Wave Office/ European Info Centre Against Violence, <https://www.wave-network.org/resources/fempower-magazine>

The laws on immigration do not provide, contrary to the requirements of the fourth paragraph of Article 59, for a specific protection for women who, following a forced marriage, were forced to move to the country of origin of their husband. The phenomenon mainly concerns young women, including minors, who have lived for years (sometimes since birth) in Italy, forced by their families to follow their husbands to another country, with the risk of not being able to return to Italy. Italian immigration law provides for the loss of the residence permit if you leave for a period of more than 6 months (or half of the period of validity of the residence permit for those lasting two years) unless the interruption is due to serious reasons<sup>117</sup>, among which forced marriage is not considered. It should be remembered in this regard that the problem of forced marriage is particularly widespread among very young girls, many not even at the turn of adulthood. When the residence permit is linked to the family of origin, there is no possibility of economic and housing independence, and the requirements for applying for citizenship do not subsist<sup>118</sup>. All this therefore exposes women and girls who are the victims of forced marriages to risk a loss of protection in Italy, as well risking the consequent violence in the country from which they were forced to move for the marriage. Many of these countries are unlikely to provide forms of protection for women who suffer violence. The so-called draft law on the *ius soli* submitted in the last legislature<sup>119</sup>, which proposed granting citizenship to minors born in Italy or who had completed a course of studies, would certainly have had a positive impact in this regard, guaranteeing the independence of girls of foreign origin from their family.

## RECOMMENDATIONS

1. Reword Article 18-*bis* eliminating the requirement of "present urgent" danger for personal safety. In the alternative, ensure the interpretation of Article 18-*bis* in accordance with the provisions of the I.C., considering recurrence for all forms of violence provided for by the I.C., including the risk of violence that women and their children may incur in their countries of origin if forced to return there.
2. Ensure that those involved in the assessment of situations of violence involving migrant women (law enforcement agencies, lawyers, social service workers) are structurally trained in the field of male violence against women and are aware of the legislation provided for in Article 18-*bis* and the methods of its application in order to ensure its widespread use in Italy and to allow adequate information to those concerned.
3. Ensure that migrant women in situations of domestic violence are granted a residence permit independent of that of the abuser, which provides protection and security for the time necessary to get out of the situation of maltreatment once and for all and to effectively deal with the consequences on the physical and mental health of women and any minors dependent on them.
4. Ensure specific legislation on forced marriage regarding the issue to women - including minors - of a residence permit in Italy independent of their family of origin and spouse.

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<sup>117</sup> Italian Presidential Decree no. 394 of 31 August 1999. Regulation concerning the provisions for implementing the consolidated text of provisions governing immigration and the status of aliens, [www.esteri.it/mae/normative/normativa.../visti/dpr\\_394\\_1999.pdf](http://www.esteri.it/mae/normative/normativa.../visti/dpr_394_1999.pdf)

<sup>118</sup> The procedure for obtaining citizenship is long and not easy to follow both for migrants who have arrived in Italy during their childhood, who obtain it only if they are minors and recognised as living with one of their parents, and for those born in Italy to parents of foreign origin who obtain it only if they request it within one year of their 18th birthday, on condition that they can prove that they have met the formal residence requirement from birth and without interruption. This is a very difficult formal requirement for migrant families who, though regularly present in Italy, sometimes find it difficult to receive housing lease contracts (with consequent formal residence), since the Italian market is characterized by a black market even in housing.

<sup>119</sup> Bill approved by the Lower House of Parliament on 13.10.2015 in a text resulting from the combination of a draft citizens' initiative law and 20 other bills, under no. 2092 Senate XVII Legislature [http://www.camera.it/leg17/465?tema=integrazione\\_cittadinanza](http://www.camera.it/leg17/465?tema=integrazione_cittadinanza)

### THE ITALIAN SITUATION AND CRITICAL ISSUES

Despite the existence of a Common European Asylum System (CEAS), Italy has critical issues that are entirely relevant from the point of view of the bureaucratic asylum process and the reception system, which is characterised by a profound structural weakness. The absence of a comprehensive law, which has created a continuous tension between emergency and ordinary situations, is aggravated by the fact that Italy, along with Greece, is the main point of entry into European territory (with direct consequences on the measures of initial reception, asylum application and the Dublin Regulation). This scenario is even more relevant for women who have applied for asylum in the period since the European Agenda on Migration<sup>120</sup> set up the so-called hotspot approach in Italy.

Since 2015, the bureaucratic and support process of asylum has been marked by these factors:

- Arrival/landing in hotspot areas where mug shots and identification are carried out with entry into the EURODAC system, first health screening, receipt of accurate information on the international protection procedure, and initiation, in case of an application for international protection, of the procedures for granting this status<sup>121</sup>. The actors present in this phase mostly belong to national/European military forces, a characteristic that makes these places particularly ineffective in identifying the vulnerabilities of women (for example, with respect to victims of trafficking and/or exploitation of human beings, or even with respect to the detection of violence and abuse suffered - Samira D.i.Re Report, 2017, p. 59)<sup>122</sup>. The initial reception system through the hotspots prevents the systematic identification of vulnerabilities, and therefore fails to identify situations of violence suffered. This is due primarily to the lack of a gender-based approach in the pre-identification procedure at the hotspots. In the absence of an adequate approach, women do not even go so far as to make the request for protection, as evidenced in the alarming case of the Ponte Galeria CIE (Rome)<sup>123</sup> concerning the forced repatriation of about 20 young Nigerian women, despite the fact that signs of violence were evident on their bodies<sup>124</sup>.

The Samira Report illustrates, among the main critical issues of the areas and hotspot approach, "cases of forced detention, expulsion decrees issued without real access to procedures, absence of specific procedure for minors, excessively long stay of minors in hotspots that at times can last even a month, inaccurate legal information and not always appropriate to the language of the person, and lack of a sufficient number of qualified intercultural mediators and interpreters". The hotspots also lack private and confidential spaces for conducting interviews necessary for an initial identification and narration of violations suffered.

- Transfer to reception facilities dedicated to the national territory after landing, in close collaboration with the competent Prefecture, without assessment of vulnerabilities or specific factors.

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<sup>120</sup> See *European Agenda on Migration* (13/05/2013), and Memorandums by the Ministry of Interior, Record 06/10/2015, p. 1, <http://www.asgi.it/notizia/hotspot-e-ricollocaemento-la-road-map-dellitalia/>. See the report on the hotspot areas edited by Consorzio Italiano Rifugiati (CIR) <http://www.cir-lus.org/2017/11/29/18134/>

<sup>121</sup> Ministry of the Interior (2015) Standard Operating Procedure (SOP) applicable to Italian Hotspots.

<sup>122</sup> See Samira Report on the D.i.Re (Women online against violence) website, in particular p. 60.

<sup>123</sup> See the Reuters article <https://www.reuters.com/article/us-europe-migrants-italy-deportations/italy-builds-new-detention-centers-to-speed-up-migrant-deportations-idUSKBN1851T7>. Enrica Rigo: Donne attraverso il Mediterraneo. Una prospettiva di genere sulla protezione internazionale, in *Politeia*, XXXII, 2016; <http://www.womensmediacenter.com/women-under-siege/denying-basic-human-rights-italy-to-deport-dozens-of-nigerian-women-torture>

<sup>124</sup> GRETA Group of Experts on Action against Trafficking in Human Beings, GRETA (2016)29, *Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, Published on 30 January 2017.



- Filling out at the above facilities or at the police headquarters of form C/3 for the asylum application, where women must indicate their history including violence, abuse and threats.

To date, and despite Law Decree 13/2017 that sanctions Italy's compliance with EU Directives regarding the adoption of gender-sensitive procedures by the Commissions, the operating procedures have remained unchanged and, in the administrative phase, a gender-sensitive approach is excluded. In addition, the recent reform with Law Decree no. 13 of 17 February 2017 (the so-called Minniti Decree) has eliminated an important phase of protection before courts, strengthening the finality of the examination before the Territorial Commission. This choice of legislative policy ultimately leads to a violation of Articles 59 to 61 of the I.C. if a new C3 form is not drawn up, which is, as far as possible, in keeping with a gender-sensitive approach that grants asylum seekers room for gender-based violence, including FGM, to emerge from the outset. Without this evidence, the subsequent hearing before the Commission does not address the relevant circumstances that could be cited for approving social as well as international protection.

### **RECEPTION CONDITIONS**

In Italy, there are three main types of reception - initial reception procedures, Extraordinary Reception Centres (SAC) and the Protection System for Asylum Seekers and Refugees (SPRAR). Due to the numerous applications for international protection, the time spent in the so-called first reception facilities increases while waiting to know the results of the procedures for granting refugee status. More than 80% of admissions are in the SACs, where reception is organised mainly on an emergency basis.<sup>125</sup> Despite Legislative Decree 142/2015 that provides for reception centres to adopt specific measures for vulnerable groups such as pregnant women, women who are victims of trafficking, of torture, of sexual, physical, and psychological violence, and FGM, many of the initial reception workers still lack the qualifications and skills to respond to the assessment and support needs of people with a vulnerable profile<sup>126</sup>, exposing asylum seekers to new risk situations in the subsequent phases of reception.

The management of reception centres varies at regional and provincial levels, and the material/social/health conditions in which women live differ accordingly. This inconsistency leads to profound arbitrariness in the manner in which asylum seeker management is conducted, and places serious limitations on the delivery of primary reception, listening or specific support services. This damages the institution of asylum (with profound repercussions on women), and is in contrast with the European directives on asylum and protection implemented by Italy<sup>127</sup>, and with the I.C..

In this context, it is necessary that the identification of vulnerabilities be conceived by the system as a continuous process, from the initial phases of reception through to the reception and

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<sup>125</sup> It should also be noted that many reception centres are under investigation for mafia infiltration in the management of public contracts.

<sup>126</sup> Samira report, p. 68; See article 10 of Legislative Decree 142 of 18 August 2015, as amended by Legislative Decree no. 13/2017 "In the centres referred to in article 9, paragraph 1 [initial reception centres], respect for privacy, including gender differences, age-related needs, protection of the physical and mental health of applicants, family unity composed of spouses and relatives within the first degree, provision of the necessary measures for persons with special needs pursuant to article 17 shall be ensured. Appropriate measures shall be taken to prevent all forms of violence, including gender violence, and to guarantee the safety and security of applicants and staff working at the centres."

<sup>127</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A32011L0095>

Procedures Directive 2013/32/EU

<http://eur-lex.europa.eu/legal-content/it/ALL/?uri=celex%3A32013L0032>

Reception Conditions Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast).

<http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A32013L0033>

integration process. It requires coordination mechanisms at local levels between the actors involved in reception and assistance, including anti-violence centres, and ways to facilitate better cooperation in reporting and taking charge of women in a holistic and complementary way, regardless of their legal status. It is important in this sense to ensure sufficient resources are made available to specialist organizations working with women and children who are victims of trafficking and violence, and to replace the project approach with a perspective focused approach based on offering real services.

A study already mentioned <sup>128</sup> showed that the type of primary reception centre that is most functional in identifying vulnerable persons is that of secondary, and not yet formalised, "reflection" structures that offer vulnerable people a settlement phase that is equipped to possibly uncover violence, and thereby prevent trafficking.

With the aim of correcting the distortions of the existing reception model, Law Decree no. 13/2017, which is yet again underpinned by an emergency and security logic, introduced a new Italian Government plan for immigration that betrayed the expectations of a comprehensive reform of the rules on international protection and the right of asylum. Even the gender-sensitive provisions that Italy, in implementation of the European Union Directives, has formally adopted at a regulatory level, have remained unfulfilled. The limitation of the current reception system is that the gender issue is taken into consideration for the first time only during the interview before the Territorial Commission.

#### **LACK OF DISAGGREGATED DATA BY GENDER AND NATIONAL REPORTS ON THE STATUS OF WOMEN ASYLUM SEEKERS**

International bodies dealing with asylum and refugees, such as UNHCR, offer data on asylum seekers with regard to the number of landings, asylum applications, and the outcome of applications. These data are not broken down by gender, except in summary form. <sup>129</sup> The attention given to landings ignores what happens along the entire asylum journey and does not match these data with those of the countries of origin/transit. The Ministry of the Interior publishes data on the development of landings, <sup>130</sup> limiting gender differentiation to "males" and "females" and without matching data with provenance and age groups. <sup>131</sup>

With respect to the requests made, primary critical issues emerge:

- 1) An absence of data (quantitative and qualitative), and the consequent difficulties in compiling relevant data;
  - a) A sufficiently comprehensive picture of the legal situation of women asylum seekers, of the support and services they receive, do not receive and/or are entitled to, and a complete picture of vulnerability profiles;
  - b) A qualitative analysis of the interpretations of gender-based violence, including FGM, and of the conditions of protection offered to women.
- 2) The lack of information on the grounds for asylum applications (e.g., relating to FGM - see commentary on Article 38 of the Convention), or on the grounds on which it is decided to recognise or deny women's applications;
- 3) The need for continuous training of actors dealing with, among other vulnerabilities, victims of violence, including sexual and physical violence. There is a clear gap between

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<sup>128</sup> D.i.Re Network (2017) Samira Project.

<sup>129</sup> For example, the UNHCR website for landings on the Western and Eastern Mediterranean routes (to Italy and Greece, respectively) only records the percentage of 'women landed' compared to total flows by sea (for example: 170,690 arrivals in 2017, of whom 20% are women) <https://data2.unhcr.org/en/situations/mediterranean>

<sup>130</sup> <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo>.

<sup>131</sup> Statistical Notebook from 1990 to 2016, available at <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo>. Compared to the years 2014-2015, the gender breakdown is limited to percentages of women and men, the outcome of applications and denials (e.g., in 2015, out of a total of 71,117 applications, 5% were granted asylum, of whom 13% were women).

the formal level of rights, in particular with regard to the reception conditions to be guaranteed in situations of vulnerability<sup>132</sup> and their application;

4) Due to the lack of data and/or monitoring, it is difficult to assess the reception conditions where the women are hosted. This should be noted as one of the priority issues in Italy. Moreover, the data on reception are not disaggregated by gender. It is not possible to know how many and which Centres are exclusively for women and/or the places available in suitable facilities. Most women are forced to live in mixed environments, in supernumerary facilities, and access to medical and support services is often difficult and fractured.

5) In many regions, there is an absence of connection between reception facilities and medical, health and social personnel specialised in the recognition and treatment of violence, including FGM (for example: with health agencies, with anti-violence centres).

6) Lack of data on repatriations and deportations of women. It is therefore difficult to assess the real dimension of either the respect given to the principle of *non-refoulement*, or its violation

The new Italian government has amended immigration laws to restrict immediately the criteria and procedures of reception. The Law Decree, “*Decreto Legge recante modifiche alla disciplina sull’immigrazione, la protezione internazionale e la concessione e revoca della cittadinanza italiana*”, known as the *Salvini Decree*, has been in force since 5 October 2018. This Decree signals a significant regression in the protection of asylum seekers in general and women victims of gender violence in particular. The Salvini Decree has abrogated the humanitarian protection afforded in accordance to Art. 5, co. 6, d.lgs. 286/98, whereby it is now no longer possible to issue a residence permit for humanitarian reasons, seriously damaging the human rights of applicants seeking international protection and creating absolute uncertainty for all who were accorded this permit before the Decree was issued and who will now be required to renew the permit under new and more restrictive conditions. The abolition of the SPRAR system for asylum seekers and for beneficiaries of international protection is also a serious problem, exacerbated by the restriction of the laws regarding the identification of asylum seekers.

#### *Article 61 – Non-refoulement*

#### **THE ITALIAN SITUATION AND CRITICAL ISSUES**

Italy was condemned by the ECHR in 2012 for breaching the principle of *non-refoulement*<sup>133</sup>. In Italy there are Identification and Expulsion Centres (CIE) transformed into Detention Centres for Repatriation (CPR), but there are no data on women in the CIE/CPRs, on repatriations and/or on the expulsion of women.

Furthermore, it should be noted that the infringement of that principle is not limited to its substantive implementation. The fear of expulsion - or of being returned to third countries - is a strong fear (threat) that casts women and men into a state of anxiety and insecurity. International and partnership agreements prevent women from arriving in safe places, as outlined first and foremost by the Italy-Libya agreement.

#### **2011 RECOMMENDATIONS CEDAW COMMITTEE**

*55. The Committee recommends that the State Party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, including in the application stage and recognizes gender persecution as a ground for recognition of refugee status according to the 1951 Convention relating to the status of Refugees.*

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<sup>132</sup> Legislative Decree 142/2015; Reception Conditions Directive – 2013/33/EU: Article 21, and victims of torture and violence, Article 25, as referred to in Paragraph 2; the UNHCR Guidelines, May 2002, Senate Report to Brussels, 3 March 2016, at the FEMM Committee.

<sup>133</sup>[https://www.giustizia.it/giustizia/it/mg\\_1\\_20\\_1.wp?facetNode\\_1=0\\_8\\_1\\_60&previousPage=mg\\_1\\_20&contentId=SDU743291](https://www.giustizia.it/giustizia/it/mg_1_20_1.wp?facetNode_1=0_8_1_60&previousPage=mg_1_20&contentId=SDU743291)

## **2017 RECOMMENDATIONS CEDAW COMMITTEE**

16. *The Committee recommends, in line with its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, that the State party:*

- (a) Put in place gender-appropriate, culturally sensitive and age-sensitive individual screening and assessment procedures to ensure the systematic and early identification of refugees and asylum seekers, in particular women and girls who have been victims or are at risk of gender-based violence;*
  - (b) Increase the number of available places in reception centres and ensure adequate reception standards for refugees and asylum seekers, with particular attention to the needs of women and girls;*
  - (c) Provide adequate services to refugees and asylum seekers placed in administrative detention, in particular women with specific needs and vulnerabilities;*
  - (d) Ensure that immigration detention is applied only as a measure of last resort, after it has been determined, on a case-by-case basis, to be strictly necessary, proportionate, lawful and non-arbitrary, and is imposed for the shortest possible period;*
  - (e) Strictly observe the principle of non-refoulement for all women and girls in need of international protection and amend expulsion procedures to ensure that no individual is expelled without an individualized risk assessment;*
  - (f) Increase collaboration with and financial support to civil society organizations working with women refugees and asylum seekers;*
34. *The Committee recommends that the State party expedite the adoption of bill No. 2148 and that it:*
- (e) Ensure compliance with international standards on procedural safeguards in statelessness determination procedures and apply them in a gender-sensitive manner.*
40. *(d) Provide access to basic services to all women migrant workers, regardless of their immigration status.*

## **2012 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN: REPORT ON ITALY**

94. *The Government should:*

- (k) Amend the “Security Package” laws generally, and the crime of irregular migration in particular, to ensure access of migrant women in irregular situations to the judiciary and law enforcement agencies, without fear of detention and deportation;*

## **RECOMMENDATIONS**

1. There is an urgent need for competent and well-trained staff who possess a gender perspective to be available during the initial landing procedures and at the hotspots in order to establish and monitor the application of minimum standards for the early detection, protection and referral of women who have survived gender-based violence, including FGM, and of potential victims of trafficking to ensure that women have timely access to help services and pathways of help.
2. The urgent creation of an observatory or an analysis of the material conditions, social assistance and health of women asylum seekers and refugees in reception facilities, including centres (CIE and CPR), is recommended.
3. It is necessary to guarantee, in all phases of reception, that complete and adequate information is available for all women, with the aim of increasing their awareness of their rights, understanding their particular vulnerabilities and facilitating access to the services they need. The information should be prepared with an inherent logic of empowerment and pursuit of independence.