

**30 years
CEDAW**

1979/2009

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



A List of Critical Issues concerning the Sixth Periodic Report of Italy on CEDAW

Proposed by the Italian Network “30 years CEDAW - Lavori in Corsa”

Written by

Barbara Spinelli – Italian Association of Democratic Lawyers (Giuristi Democratici)

Contributions by

Beatrice Costa: ACTIONAID

Oria Gargano, Francesca De Masi, Maria Silvia Soriato: BE FREE

Teresa Manente, Ilaria Boiano, Elisa Ercoli, Chiara Scipioni: DIFFERENZA DONNA

Anna Pramstrahler: D.I.RE Donne in rete contro la violenza

Barbara Spinelli: GIURISTI DEMOCRATICI

Monica Mancini: IMED

Maria Grazia Ruggerini: LE NOVE

Augusta Angelucci: Ospedale San Camillo Forlanini

Claudia Signoretti, Ana Maria Gallareta & Simona Lanzoni: FONDAZIONE PANGEA

Giovanna Piaia: Town Councillor for Equal Opportunities in RAVENNA

Contact details

Shadow Report Rapporteurs: 30YEARSCEDAW@gmail.com

Lavori in Corsa Secretariat: coordinamento.cedaw@womenin.net

Phone: +39 3406248970; +39 3401110199

Fax: +39 051238468; +39 +39 02 29537373

Website: www.womenin.net/web/cedaw/home

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**CEDAW PRE-SESSION
25th - 29th October 2010**

Comments on the sixth periodic report by Italian Non-Governmental Organizations

LIST OF CRITICAL ISSUES

Introduction

"30years CEDAW – Lavori in corsa" is an Italian platform of associations and individual women involved in research, activism and training on women's rights and gender analysis in development cooperation. Together we decided to promote an awareness-raising project to mark the 30th anniversary of CEDAW (in 2009): since November 2009 we have been organizing several events in many Italian towns, in partnership with local institutions. Since Italian Government has submitted to CEDAW committee its 6th periodic report last December, we decided to work on a Shadow Report that would be submitted before the July session of Committee on the Elimination of Discrimination against Women (2011). Our report will contain a critical analysis of the official report, counter-facts, evidence of major challenges faced by women in Italy, a list of key concerns by women's rights organizations and some recommendations on how to improve policies and practice for the fulfillment of CEDAW in our country.

With this document we want to provide a short list of critical issues for consideration by the Committee on the Elimination of Discrimination against Women in advance of its pre-sessional working group meeting on 25th -29th October 2010, when Italian Sixth Periodic Reports will be considered.

On knowledge and awareness of CEDAW in Italy

In Italy, CEDAW lacks visibility. Despite general recommendations (n°6 – paragraph 2 and n° 25 – paragraph 2) and specific recommendations made by the Committee to Italy in 2005, the Convention, General Recommendations, and Optional Protocol have not been officially translated in Italian. The Minister of Equal Opportunities website provides just a link to the CEDAW online pages, with no access to translated documents.

CEDAW is generally not invoked in the Court, nor included in the University Law curricula or in the training of Judges. The Parliament either, which ratified CEDAW almost thirty years ago, never committed in increasing CEDAW's visibility or in monitoring its implementation.

No official celebration has been organized to mark the 30th anniversary of the Convention. Only few local bodies subscribed the civil society campaign "30years CEDAW – Lavori in corsa"¹.

About Italian government reporting

Committee recommendations n. 12, 38, 41 have been totally disregarded by Government: the 6th periodic report was not discussed in the Parliament nor in a public space and consultation with NGOs has failed in terms of clarity of scope, timings, people involved.

- In 2006, thanks to an appeal signed by almost 100 organizations and individual women, an official question for written response has been presented in the Low Chamber towards the Minister of Equal Opportunities². The document denounced the lack of action by the Government in making CEDAW well known and lack of transparency in official reporting procedures. The Government was asked to clarify how it would ensure a wide dissemination in Italy of all what related to CEDAW in order to make civil society, civil servants, MPs... aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in this regard. Government has never replied.
- In 2010 a group of women involved in the drafting exercise of the Shadow Report informally asked to the relevant representative of the Government³ to translate in Italian and publish the 6th periodic report, but we were told that it was impossible because of lack of funds.

Key issues in Italy related to discrimination against Women

There are some issues that the organizations contributing to the Shadow Report consider to be the most important. We suggest that the following key issues are put on the table for the Pre-Session discussion.

1 See calendar of events: www.womenin.net/web/cedaw/home

2 Act n. 4/02065 submitted by MP Titti De Simone on 4.12.2006 during Chamber of Deputies session n. 090.

3 Beatrice Costa, Titti Carrano, Barbara Spinelli and Simona Lanzoni (on behalf of the campaign) met last June, 1th 2010 Mr. Simonetti, former President of the Inter-ministerial Committee of Human Rights within the Ministry of Foreign Affairs.

1. Lack of gender perspective, gender mainstreaming and gender budgeting (ARTICLES 1-4 CEDAW)

- I. No progress was made on Committee recommendation n. 20-24. In developing gender equality policies and in the formulation of programmatic papers, Government never refers to CEDAW, and never considers concerns and recommendations expressed by the Committee in the latest concluding comments. It seems as Government is not clear about its obligations under the Convention and therefore does not proceed to implement CEDAW. In the platform papers too, there are no references to the obligations the Government assumed under the Convention.
- II. The portfolio of the Ministry of Equal Opportunities is on several grounds of discrimination. Women's issues are among the areas of work and women themselves are still often considered as "vulnerable" or group "to protect". Italian Government considers discrimination against women as one among the other forms of discrimination, without acknowledging its specific nature. That's why so far the Government has not been able to effectively tackle under-representation of women and a redistribution of resources and power between men and women.
- III. Since there is no regular dialogue between the Italian Government and women's NGOs and in the **absence of an independent national human rights institution**⁴ it is very hard for civil society to contribute to the development of a consistent, effective and comprehensive strategy against gender discriminations and to monitor the effectiveness of the action plans carried out by the Government.
- IV. *The facto* equality is still lagging behind *the jure* equality. **The definition of discrimination contained in the Equal Opportunity Code is narrower than required by CEDAW art. 1**, and only covers discrimination in the conditions of employment, vocational training, life-long learning and working conditions (including public functions, military career, activity in trade unions or employers organizations, access to social security).
- V. The Italian Equal Opportunities Code amended anti-discriminatory law n. 125/91 decreasing its standards of protection. Law n.125/91 considered *discrimination* all unfavourable treatments resulting from the application of criteria which would be proportionally more detrimental to either male or female workers and related to requirements not essential for work performance. The Italian Equal Opportunities Code now considers discrimination all unfavourable treatments resulting from the application of criteria placing women "*in a position of particular disadvantage compared to male workers*". Therefore it fails to consider discrimination situations where there is a different treatment concerning men and women and confines discrimination to treatment resulting in a significant disadvantage to women.
- VI. **Gender based anti-discriminatory proceedings into courts are possible only in the fields of work, training and trade unions**. They are difficult and expensive to be taken on. There are no anti discriminatory laws to contrast gender discrimination beyond work issues. Sanctions are only envisaged when discrimination relates access and provision of goods and services. There are neither sanctions no rules in the fields of tax, gender representation in the media, education and the absence of women from decision making processes. All these sectors were initially included in the services Directive n. 113 of 2004.
- VII. The Equal opportunities Councillors see their powers and independence more and more reduced. Through a practice contrary to law, Minister Sacconi relieved the National Councillor, Mrs. Fausta Guarriello, appointed by the previous Government, of her duties last November, 4th. The decree of annulment was signed by the Minister of Labour and the Minister of Equal Opportunities after the Councillor had expressed her negative opinion about the abrogation of Law n. 188 of 17.10.2007, a law passed by Prodi Government with a nearly unanimous vote by the previous legislation on the initiative of all parties' women members, in order to contrast *blank resignation*⁵. The Equal Opportunities Councillor pointed out that "*the abrogation of Law n.188/2007 on voluntary resignation left working women without protection especially during pregnancy and return from maternity*". The decree stated that, differently from what is expected by law, "the Equal Opportunities Councillor is not an independent authority"; the reason for annulment was due to "*the lack of her agreement on Government's policies and the evident prejudice against the implementation of policies by the Government on that topic.*" At the moment no new protection instruments have been provided to contrast blank resignation.
- VIII. The Italian Government has failed to take any action to encourage the gender budget analysis and gender impact assessments at national level. Gender budgeting has been introduced only by few local authorities (some municipalities, regions, provinces)⁶.

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

5 The blank resignation is an illegal practice where an employee is forced to sign a voluntary dismissal document with no date marked at the beginning of his/her contract. The document can be used by the employer at any time he/she decides to fire the employee: the date is then put at the moment of firing. This practice has been illegally used especially towards women, who often are fired when they communicate their pregnancy or immediately after having given birth.

6 See for instance: www.genderbudget.it; www.bilanciodygenere.it.

2. Sex roles and sexist stereotyping (ARTICLE 5 CEDAW)

Committee recommendations n. 25-26 have been completely disregarded by the Government. **Degradation of women's representation** in mass media, in the public discourse and in the political debate persists.

I. The Italian Government has been so far unable to tackle sexist portraying that is massively present in all forms of commercial advertisement. Female naked bodies are used to sell everything. There is no preventive control to verify if the advertising is discriminatory against women: therefore offensive and machist advertising are exposed or broadcast for a long time. Even if it is formally possible to appeal to the advertising self-regulatory Authority⁷, sexist stereotypes are not forbidden by any specific norm under the self-regulatory code.

II. In many TV shows, women are nearly ornamental presences⁸: almost naked and silent.

III. Members of Government and Parliament use sexist expressions with increasing frequency. It can be the case of metaphorical expressions (Mr. Cota, Lega Nord party, winner of the regional election in Piemonte, declared that his victory over Mrs. Mercedes Bresso "was like a rape"), or cases of stereotyping of women at large (in a talk show, a young woman asked to Mr. Berlusconi how it was possible for a young person to stand without a full-time job; he replied that a woman with such a lovely smile can solve her troubles marrying one of his sons or nice rich guy⁹). Public discourse stresses the importance of beauty as a success factor for women in politics and in the career development (in one of the most popular Italian talk-shows, Mr. Berlusconi said to Ms. Rosi Bindi – Vice President of the Low Chamber - "*You are more beautiful than intelligent*"¹⁰). Many other cases could be quoted in this regard: the issue in a nutshell is that politicians are too often promoting sexist and discriminatory kind of thinking and institutions in charged of gender equality never expresses disagreement of public condemns of these attitudes.

3. Numbers of women in decision making are still too low (ARTICLES 7-8)

Committee recommendations n. 27-28 were totally disregarded by the Government.

I. **The number of elected women at local and national level is still very low**. The majority of political parties in their internal regulations envisage some norms on gender equality or quotas for candidatures and posts, but most of these internal rules are applied with irregularity.

II. By the amendment of article 51 of Constitution, it is possible to change the electoral system for the national Parliament elections, making the gender equality compulsory. Nevertheless no measures were taken by the Government to promote *de facto* equality on the ground of political participation, although there was the opportunity in October 2005 through the electoral law amendment, that changes the electoral system from the mixed majority to a proportional representation with fixed party lists. On that occasion, an amendment requiring a minimum of 30% of one of the two sexes in the electoral registers was rejected by a secret male cross-parties vote in the Parliament.

III. There is an increasing number of administrative actions against public administration/local town councils where there are no women at all (it is the case of regional councils of Calabria and Basilicata) but each case is treated ex post and as a unique with no general framework of action nor ex-ante measures¹¹.

IV. The 6th periodic report addresses article 8 issues just providing the numbers of women in diplomatic services and in the army, without considering their seniority and leading roles or any critical issues that still prevent women's equal representation and participation in global decision-making bodies.

V. Concerning the presence of women in the Italian Defence sector, based on 2009 data¹² the report does not clarify what it means by saying "*There is no doubt that this is one of those sectors in which there is the acknowledgment of the role played by women on the ground both in Italy and in missions abroad*". We think that this lack of critical thinking is linked to the absence of any remarks on the broader framework of implementation of UNSCR 1325/2000 that is much more articulated. Italy is one of the EU countries still lacking a National Action Plan for implementation of UNSCR 1325 (and following resolutions on the issues of women, peace, security).

VI. The general lack of financial and human resources of Italian development cooperation and the incomplete gender mainstreaming within different functions and structures of the agency cause serious concern. The official report did not explain what has been done to support women's leadership in global institutions and did not provide complete data in this regard (sex disaggregated data in all international institutions where Italy is represented).

7 See www.iap.it

8 See the wide-spread documentary "The body of women", by Lorella Zanardo: www.ilcorporadelledonne.net.

9 <http://www.youtube.com/watch?v=WlY5UeYeePs&feature=related>

10 <http://www.youtube.com/watch?v=5uRFfkhz5Ag>

11 The national association UDI (*Unione Donne in Italia*) launched a campaign called "50/50 wherever a decision is taken": its main message has been translated into a proposal of law: 120.000 signatures have been presented to the Senate in November 2007 but the exam of this people-led law initiatives is stuck in the Constitutional Affairs Commission.

12 See National Reports available for download at: http://www.nato.int/cps/en/natolive/topics_50327.htm

4. No adequate policies for poor and unemployed women (ARTICLES 11-13-14)

The Government failed to effectively address women poverty; to develop a national policy intended to reduce gaps between northern and southern regions (see also Rec. n. 29/2004 and 41/2004 CESC) and to guarantee standards/minimum services across the country.

I. Women are more at risk of poverty. Recommendation n. 30 was not sufficiently implemented by governmental policies. Social protection and working conditions of Italian women have deteriorated also as a consequence of the economic crisis. In Italy women mature a less number of years contributions (52% is under 20 years contributions), earn lower wages (the ISFOL Plus – 2005 research states an average difference of 22%) and work more often in the grey and black market than men. For all these reasons women are particularly at risk of poverty. Based on the absolute poverty index, women account for 53.6%. Future projections prefigure the increase of the risk of women's poverty due to the introduction of a stricter link between paid contributions and social security benefits.

II. A research¹³ highlights that governmental policies against social exclusion of women provided very little and ineffective protection. Economic and socio-cultural poverty often overlaps with maternity, due to the absence of welfare services (such as kindergarten, family allowances, baby benefits and other good practices largely fostered in other EU countries) specifically aimed at helping women keeping their job or getting one. In Italy, poor mothers with at least one dependent child are slightly over one million, 59.7% of poor mothers and 8.73% of all Italian mothers. 86.3% of poor mothers live with a partner, 7.5% are single and the remaining 6.2% live in enlarged families. The latest 2009 CISF report¹⁴ shows that average monthly expenditure for dependent children is 35.3% of total family expenses for basic needs. As a point of interest, the access criteria to child benefits and family allowances are more selective in Italy than in any other EU countries. Such benefits are only intended for wage earners of work income, thereby excluding workers without a regular income and also most women working in the grey and black market.

III. The *Action Plan 2020 to increase women's inclusion in the labour market*¹⁵ jointly elaborated by the Ministry of Welfare and the Ministry of Equal Opportunities in December 2009 does not meet the CEDAW recommendations. Recently released ISTAT data¹⁶ show that the female unemployment rate in the second quarter of 2010 is 9,4% while in the same quarter of 2009 was 8,8%. 48,6% of female population in Italy is inactive and does not look for a job (the EU average is 35,7%). Total Italian female employment rate in 2009 is 46,1%, (in southern Italy 30,6%). In Italy women with executive responsibilities are 11,9% (the European average is 33%). Since February 2009 the call for proposals for "work-life balance" projects foreseen by Art. 9 of the 53/2000 law are not financed. The Action Plan mentioned above does not foresee temporary special measures to cope with these data. In this document "women inclusion in the labour market" is fundamentally linked to the balance between work and family. The "intergeneration agreement" seems to be discriminatory against women: the State asks to grandmothers to look over their nephews so that mothers can work. Consequently also jobs for women in the services sector decrease.

IV. Young women are the most discriminated in the labour market. Female students outperform male students in academia but are overcome in the labour market. A recent research¹⁷ shows that the pay gap between male and female graduates is already 11% at the outset of their career, having the same productivity level. In the absence of specific targeted actions, this gap is bound to increase, with negative impact on women and society as a whole.

V. Aggregate national data on welfare expenditure show that women and family fail to receive their fair share (see Eurostat data 2005¹⁸). The bulk of expenditure goes to old-age pensions and survivor's benefits, (60.7%, compared to EU average of 45.7%). Women live longer and yet most pensions are received by men: working women entitled to a pension are fewer than men. Old age pensions evidence almost a 50% gender difference, the highest in EU25.¹⁹

VI. Women in rural areas: the government's report does not address at all the article concerning rural women's rights. No analysis is provided, no data are mentioned. Yet, a gender gap in the running of farms can be noted: just one every three farms is run by a woman.²⁰ Moreover women-run farms are on the average smaller than those run by men, with negative effects on their economic performance, when compared to the whole farm sector.²¹ In Italy

13 Carried out by Cittaitalia in 2010 on poverty conditions of mothers in Italy

14 P. Donati "The costs of children: which welfare for the families?" Report CISF, FrancoAngeli, Milano, 2009.

15 See www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/PrimoPiano/piano_italia_2020.pdf

16 See data: www.istat.it/salastampa/comunicati/in_calendario/occprov/20101001_00/testointegrale20101001.pdf

17 Castagnetti, C. e L. Rosti (2010) "The gender pay gap among Italian university graduates in the early years after labour market entry" forthcoming in *Quaderni del Dipartimento di Economia politica e metodi quantitativi* # 214 - (09/10).

18 Eurostat, Statistics in focus 46/2008, Social Protection in the EU, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-046/EN/KS-SF-08-046EN.PDF

19 Data of "Observatory on Pensions", Inps, 2009: women average is 630€ per month, men average is 1.219€ per month

20 Source: www.agricolturaitalianaonline.gov.it

21 Veronica Rondinelli, *L'imprenditoria femminile nel settore primario: alcune indicazioni dell'indagine sui risultati economici delle*

women's access to capital, land and technology is lower²².

VII. In Italy, female entrepreneurs meet great difficulties in getting access to credit. They mainly rely on self-financing (from family and friends) and bank credit. A recent study on access to credit²³ reveals that, all other conditions being equal, female entrepreneurs pay 30 to 50 basis point more than male entrepreneurs. This differential is not related to a higher risk of bankruptcy - it is rather the other way round: in 2004 bankruptcies were 1.9% for women, 2.2% for men. Moreover, female entrepreneurs managing very small firms are required to provide external guarantees more often than their male counterparts.

5. No guarantees for free access to sexual and reproductive health (ARTICLE 12)

Committee recommendations n. 33-34 were totally disregarded by the Government. Access. Sexual and reproductive health right is heavily hindered by the moral approach and religious/personal beliefs of a disproportionately high number of health officers and gynaecologists who are "objectors" (to abortion for example). Therefore they make it very difficult for women to access to emergency contraception and the abortive pill. As a matter of fact in almost all Italian regions in the gynaecology departments there are more objectors than doctors performing abortions²⁴. In spite of this, Government has not taken any measure in order to provide the regular presence of non-objector doctors in hospitals, and to guarantee women's right to a free access to sexual and reproductive health services.

- I. **Ru 486**. Unlike most European countries, in Italy the RU 486 has been definitively approved for general use and distribution by the National Drug Agency only on July 31st 2009²⁵. The guidelines of the Ministry of Health, according to National Health Council's advice that is explanatory of the law 198/1978 (on abortion), suggest that the medicine should be taken in an ordinary hospitalization. This means that for women it is not easy getting access to RU486, since hospitalization and treatment conditions vary from region to region²⁶.
- II. **Assisted fertilization** Law n. 40/2004 concerning assisted fertilization under art. n.14, par. 2 and 3, explicitly banned prenatal diagnosis and the freezing of embryos, and only allowed for the simultaneous implant of three embryos. As a consequence, five years after the enforcement of this law, three-twins deliveries have been 3% of all births compared to the EU average of 0.8%²⁷. The Constitutional Court by its ruling n.151/2009 considered this norm as illegitimate, since it provides an excessive protection for the embryo, to the detriment of the mothers' health rights as embodied in art. 32 of the Italian Constitution²⁸. All this notwithstanding, the ruling of the Court has had no practical impact so far. It is not clear which steps Government it is going to take in order to regulate assisted reproduction techniques and RU 486 administration, and if it will be safeguarded the principles of a secular State, in the full respect of women's rights and needs in their conditions of distress.

6. Intersectional & multiple discrimination faced by women

Committee recommendations n.35-36 were totally disregarded by the Italian Government. There is no legislative protection against intersectional discrimination. Many women face discrimination in a broad range of areas, simply because they are women, but they also face additional discrimination as disabled, or as migrant women, Roma or Sinti women, lesbians or transsexuals. A statistical measurement of discriminations, based on a gender approach is a fundamental tool for the development of appropriate policies.

- I. **Disabled women (GEN. REC. 18)**: In Italy there is still an insufficient level of awareness of the existence of this twofold source of discrimination and its effects have been largely undocumented. Architectural barriers are still today one of the main obstacles to the integration of disabled persons. Very little has been done so far to provide

aziende agricole dell'anno 2002. ISTAT.

22 ISTAT states that the "factorial endowment" (credit, land and machinery) for women is on the average 60% of men's one.

23 Alberto Alesina, Francesca Lotti & Paolo Emilio Mistrulli, "Do Women Pay More for Credit? Evidence from Italy", Nber Working Paper 14202-2008) that takes into consideration more than 150.000 small enterprises (out of which 25% are run by women).

24 According to ADNkronos Agency 59,5% of Italian gynaecologists operating in health structures which make voluntary abortion is objector. Peaks: 92,6% in Basilicata; 80,5% in Veneto; lowest percentages: 39,9% in Calabria; 20% in Valle D'Aosta.

25 On 5th October 2009 the licence to sell RU 486 was published on Official Gazette. After a heated debate in political circles and in social society, the distribution by the manufacturer in Italy started only in April 2010.

26 Consequently, in some Regions this medicine is given in day hospital, in others in 3-days hospitalization. The new Presidents of Piemonte and Veneto Regions, belonging to Northern League party, declared that they wanted to refuse the licence to buy and use the pill. The President of Piemonte Region, Mr. Cota, declared "I'll leave RU486 in the stores", hinting that he would have used political obstructionist tactics to the pill distribution in hospitals even if the Regions are obliged to distribute this medicine.

27 L'Espresso, *Embrioni nel caos*, di C. Valentini, 04/06/2009, p. 62-63

28 B Spinelli, *Un'analisi sulla violenza di genere in Italia alla luce delle Raccomandazioni del Comitato CEDAW*, <http://femminicidio.blogspot.com>; La Repubblica, Rodotà S., "Sconfitto lo Stato Etico", p.1, 02/04/2009.

assistance to disabled persons in general and from a gender point of view.

- II. **Migrant women** Despite migrant women constitute 49,9 % of regular migration²⁹, no structural special measures were taken to promote their social inclusion.
 - I. **Trafficked women (ARTICLE 6)** Despite law n.286/1998, art. 18, too many women are still trafficked and deported, and/or do not receive adequate assistance, because at local level several mayors impose administrative measures against prostitution in public areas, without any effort to recognize the sex workers' status as victims - as recommended by EU and UN, and not enough actions to monitor and collect data. At national level, the Minister for Equal Opportunities drafted a Bill (A.S. 1079) that punishes prostitution in public areas with fines and jail sentences. Indoor prostitution becomes more frequent, and this is a serious problem in terms of applicability of art.18, because women can not access protection programmes.
 - II. **Citizenship (ARTICLE 9):** Policies implemented by the Italian government to guarantee citizenship rights make more difficult to migrant women to undertake an independent process of social/economic integration. Given the peculiar structure of migratory flows in Italy, many women arrive to meet up their husbands once the latters have already settled. In particular foreign women apply for citizenship more because of marriage (25.070) than because of residence (2.244). To this end, the art.1, par. 11, of the Act 94/2009 introduced some restrictive measures to obtain Italian citizenship because of the marriage with an Italian citizen. Under the new regulation, to obtain the Italian citizenship it is required to have at least 2 years of legal residence in Italy since the wedding date (instead of the 6 months residence required by the previous rules) as well as to pass a test of Italian language and culture knowledge. The "permit of stay" system puts migrant women under the authority of their husbands or employers. This means that generally women avoid to denounce any case of discrimination, violence or harassment for fear of expulsion, loss of citizenship rights or children separation.
 - III. **Work (ARTICLE 11):** Migrant married women with children have a lower employment rate than Italian women (41.5% versus 48.3%). The dual burden of work in the formal sector and family care is heavier on migrant women because of the lack of public assistance and informal social network available to most Italian mothers. Often the final – direct or indirect - outcome is a double discrimination on the work side.³⁰
 - IV. **Health (ARTICLE 12)** Migrant women still face a serious lack of information about sexual and reproductive rights. In addition, the new legislation concerning migration obliges doctors to report to the police for the crime of illegal immigration, foreigners without regular permit of stay requiring hospitalization or medical visit. As a consequence, irregular female migrants are deterred from going to hospital and have to set up underground support circuits, with a very harmful impact on their sexual and reproductive health rights. Medical assistance for children born in Italy from irregular immigrant parents is in danger³¹.
 - V. **Female Genital Mutilation (GEN. REC. 19):** Law n°7 of January 2006, sanctions FGM and states the promotion of informative campaigns and awareness-raising initiatives, the set up of a special phone line to refer to, training programmes for health personnel and to migrant citizens. On September 6th 2006 the Commission to prevention and ban of FGM practices was put in place with the aim of drafting Guidelines for health personnel, create a program of prevention, support and rehabilitation for young women who have been submitted to the practice. As a matter of fact, assistance and prevention services are not so accessible for migrant women: as the website of the Ministry of Health admits, only 7 out of 20 regions and one province (Bolzano) have ad-hoc structures to assist women victim of FGM. A provisional article that originally was included in the draft of the above-mentioned law foresaw the international protection of migrant women coming from a country where FGM are legal. This proposed article has not been included in the approved version of Law 7/2006 and therefore it is extremely difficult to obtain international protection for women and adolescent who - coming back to the country of origin - are at risk of genital mutilation. Contrary to the UN and UNHCR statements, the Italian (Cassazione) High Court³², ruled that FGM do not represent a gender-based persecution, but rather a form of "subjection" women experience in a number of countries. That is why it is extremely difficult for mutilated women to obtain asylum in Italy, where their mutilations are just considered as physical injuries, rather than a violence perpetrated on a basis of gender discrimination.
 - VI. **Violence during detention in identification and expulsion centers (GEN. REC. 19)** About Identification and Expulsion Centers – IECs - 13 in Italy, for 1814 illegal migrants of both sexes, several

29 Dossier Caritas/Migrantes, 2007

30 ISTAT. Quoted by: <http://www.istat.it/istat/eventi/2007/globalforum/lunedipomeriggio/Sabbadini%20italiano.pdf>

31 Please note that maternity entitles mothers to a residence permit which expires after six months.

32 Cass. civ. n.24906/2008

institutional and humanitarian organizations³³ reported a number of critical issues. Criticisms are related to structural issues – type of housing, food and beverages, medical assistance, sanitation and substantial humanitarian problems. The Constitutional Court (ruling n. 1051/2001) declared that permanence in IECs is a measure restrictive of personal freedom that must be regulated within the framework of constitutional guarantees, according to art. 13 of the Italian Constitution. Regarding women, several cases of multiple violence have been reported. The most common were cases of sexual harassment (in September 2010 a police officer, was formally accused of abusing some Nigerian women in Ponte Galeria-Roma's IEC). There were also several cases of self-injury: a Tunisian girl, Najova, detained in Bologna's IEC, sewed her lips as a protest for being denied the recognition of asylum. In her country of origin, Najova had been repudiated and received death threats from her family because of her sexual relation and out of wedlock pregnancy. In Bologna's IEC, Faith, a Nigerian girl and an asylum seeker, was repatriated to Nigeria where she risks to be sentenced to death³⁴ for reacting to a rape and killing her employer - an old notable of her own town.

- VII. **Second generation girls (GEN. REC. 19)** Second generation girls are far less integrated than boys.³⁵ Only 7% of girls aged 10/14 see and go out with peers of the same age while for boys of same age the percentage is around 22%. Girls are less likely to do sport in a team than male peers (around 30% for girls against 45% for boys)³⁶. Parents control over second generation girls is particularly strong in Moroccan and Pakistani communities, with notorious episodes of forced marriage and honour killing.

III. **Lesbian and transsexual women** Lesbian women are treated as invisible. In Italy, talking about discrimination based on sexual orientation means to talk about "homophobia", based on the assumption that only male homosexuals can experience discrimination. Statistics concerning the sexual orientation of the population are still largely insufficient. There is a research reporting serious discriminations against intersexual women in the access to health and related services³⁷. Lack of data does not allow to understand if lesbians are more likely than gay to be victim of violence or discrimination. Government Prodi planned to fund with 300.000 euros the first national research on discrimination based on sexual orientation, but funds have been blocked by present Government³⁸. Discrimination based on gender identity and sexual orientation is the only form of discrimination without any specific recognition on criminal legal grounds, unlike racial, ethnic and religious discrimination or violence. Law 205/1993 punishes as a crime whichever act supports or encourages discriminatory actions on the basis of race, ethnicity, religion. Since violent acts and assaults to LGBT people are increasing, a new law has been discussed in order to prohibit discrimination on the grounds of gender identity and sexual orientation. However the text has been rejected based on an advise of Constitutional Court that complained the lack of definition of sexual orientation. It is not clear if the Government will address this specific form of discrimination, introducing a legal definition of sexual orientation and providing effective measures to protect lesbian women against the episodes of violence and discrimination on such grounds

7. No prevention, protection or compensation for the victims of violence against women (GEN. REC. 19)

I. **The Italian Government Report does not have a specific focus on men's violence against women**, while this issue has been confined to the notes xix-xxx, ignoring the statement of General Recommendation n.12.

II. **The Italian legal system still lacks a global strategy to combat all forms of violence against women and girls** including domestic violence, contrarily to what requested by General Recommendation no. 19. Consequently the legal measures to prevent and contrast the problem, as well as to protect the victims, turn out to be inadequate. These measures are based on the logic of preserving the public order more than on the concept of gender violence as a severe sexual discrimination (General Recommendation no. 19, 11th session 1992, §6 and lately confirmed by the European Court of Human Rights in the sentence 9 June 2009, Opuz c. Turkey).

III. **The Italian government failed to prevent violence against women, and to protect women from domestic violence and sexual harassment at workplace.**

- I. The new Act 39/2009 introduced the obligation to give information about the anti-violence centers operating in

33 Medici senza frontiere reports 2005 and 2009, Amnesty International (AI Index:EUR 30/004/2005); Steffan de Mistura Commission Report 31.1.2007; Comitato per la prevenzione della tortura, Comitato diritti umani delle Nazioni Unite, Federazione internazionale dei diritti dell'uomo [FIDH]

34 Faith was conducted to the IEC because she called police during a sexual assault. Now she is in jail in Nigeria waiting for trial.

35 <http://www.kila.it/archivio-notizie-in-primopiano/donne-migranti-pi-integrate-e-pi-discriminate.html>

36 <http://www.kila.it/archivio-notizie-in-primopiano/donne-migranti-pi-integrate-e-pi-discriminate.html>

37 See: M Bonarigo, "Non chiamateci ermafroditi", Panorama 1/10/2009. Intersexual women's association: <http://www.sindromedimorris.org/>

38 L'Espresso, "Questo non è un paese per gay", di R. Bocca e C. Cerno, 17/09/2009, p. 66-70.

the country to the women who denounce stalking crimes and sexual violence. Nevertheless the anti-violence centers do not receive consistent and adequate funds from Institutions to cope with further workload.

II. In Italy only 2.8% of victims has access to protection programs. Moreover Italy is the country with the lowest number of shelters for women victims of violence, which is 90% less than the European average.

III. The training of social operators, police and health workers on domestic violence is insufficient since it is based on sporadic initiatives with no updates nor follow-up. Most of them are self-trained that do not take into account a gender perspective. Budget allocation for the training programs is scant and there are no control mechanisms to follow-up on the achievements. Because of the inadequate training of social operators the risk undertaken by victims asking for help is often underestimated.

IV. There is a wide range of legal instruments for the timely protection of women victims of violence, but in practice they turn out to be scarcely enforced, as highlighted by the national network of lawyers of anti-violence centers. This different application is due especially to the deficient training of lawyers and judicial staff about mechanism of gender violence and to the lack of gender perspective. The deep-rooted patriarchal stereotypes, embodied even by people who should protect women through the legal system, often worsen women's access to justice.

V. There is a lack of disaggregated statistics about "neutral crimes" when victims are women subjected to domestic violence (injuries, violation of domicile, missed payments of alimony, abuse).

VI. There is a lack of disaggregated statistics about the outcome of criminal trials.

VII. Due to patriarchal culture, sexual abuses by intimate partner are punished less than a sex abuse committed by unknown perpetrator. The general attitude towards the victims of sexual abuse make them feel guilty. Sexual harassment is not perceived as a form of sexual violence. Some sentences on the subject reflect a sexist mentality.

VIII. The Italian government is not implementing the outline decision 220/2001/Gai in connection with the position of the victim in the criminal trial. In particular, the Italian government has not adopted specific forms of protection as provided by art. 2 of the outline decision in favour of particularly vulnerable victims, such as women who are victims of gender violence. In this regard, the Decree No. 11 of 23/02/2009, which extends to the victims of some crimes³⁹ the possibility to anticipate examination during investigation, it does not apply to the victims of such crimes also the audition protective measures, applicable per art. 498 of the penal procedural code exclusively to under age or mentally impaired victims, for whom the test is carried out, upon his/her request or his/her lawyer's, by using a glass mirror and an internal circuit telephone equipment. The same Decree also does not provide a full protection for the same under age or mentally impaired victims who, if they are victims of the above mentioned crimes, can request protective measures, but they cannot actually request them if they are victims of domestic abuse, because this crime has been omitted in the text of the law.

IX. One of the most serious risks for the penal trials in case of gender violence (stalking, domestic abuse, sexual abuse) is the term of expiration of the trial, which frustrates any claim of justice by women victims of gender violence. Due to the ex Cirielli law these crimes expire in only seven and a half years, too shortly considering their complexity, for two degrees of trial and the final legitimacy review by the High Court (Cassazione). Nearly always the trials outcome is a sentence of "no procedure" in the appeal court because the time has lapsed and the felony cancelled⁴⁰.

IV. The Italian government failed to provide compensation for all act of violence against women. The directive 2004/80/CE provides that the government must compensate the victims of all intentional offences whenever the sentenced culprit are unable to do so, but the Italian government refuses to fulfil the requirement of this directive. The Turin Civil Court ha sentenced the Prime Minister Office to pay 100.000,00 Euro in compensation to a 25 years old girl who was victim of sexual abuse, kidnapped and raped for a night by two Romanian men. After having obtained the house arrests, the perpetrators of violence fled and are still fugitives today, although they were found guilty and convicted with a final sentence by the High Court (Cassazione). The High Office of Justice criticized the decision saying that the European directive does not apply also to crimes of violence against women (which is not true, because such Directive applies to all intentional offences) and, as at today, the Italian Government refuses to pay any compensation to the victim. The European Directive has not been fully acknowledged, therefore all the women who are victims of abuse (whenever the culprit is untraceable or otherwise unable to pay a compensation) are forced, in order to obtain such compensation, to sue the Italian Government, thus incurring in further expenses.

39 Articles 572, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-ocies, 612-bis, 600, 600-bis, 600-ter, although related to pornographic material as per art. 600-quarter.1, 600-quinquies, 601 and 602 of the penal code.

40 It would be appropriate on one side to extend the time limitations as already applied to other crimes, as manslaughter, or to enable faster trials taking into account the specifics of such serious crimes.