



OBSERVATIONS

ON THE SIXTH PERIODIC REPORT OF ITALY TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

(CEDAW/C/ITA/6)

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1. PRESENTATION OF THE WORK

1. The Unione forense per la tutela dei diritti umani (hereinafter “UFTDU”) is a **no-profit association** set up on March 2nd, 1968 by a group of Italian lawyers, judges and scholars. The main purpose of the association, as laid down in its Statute, is “to spread, especially among those belonging to the Bar and among law practitioners, the knowledge of national and international norms concerning the protection of human rights, and to promote their actual and effective observance at the judicial, administrative and legislative level”.

2. Within the framework of its statutory commitments, the UFTDU participates on a regular basis to UN Charter-based and treaty-based supervisory procedures to ensure Italy’s full compliance with its international human rights obligations. Notably, since 2005, UFTDU took part to the examination of the Italian periodic reports under the ICCPR, CAT and CERD, by submitting its alternative reports and by attending the Committees’ private and public sessions.

3. In line with its previous engagement, UFTDU has resolved to take part to the procedure of examination of Italy’s sixth periodic report submitted in accordance with Article 18 of the Convention on the Elimination of Any Form of Discrimination Against Women (CEDAW).

4. Having regard to the **List of issues** adopted by the pre-session working group of Committee on the Elimination of Discrimination Against Women (CEDAW/C/ITA/Q/6) and to the responses of the Italian Government to the List of issues (CEDAW/C/ITA/Q/6/Add.1), the team of legal experts set up by the UFTDU has drafted the present alternative report for consideration by the Committee during its next session (11-29 July 2011).

5. The observations and comments contained in the present report are based on the desk and field research activities undertaken by the members of the team, and take into account the information received from institutional partners and organizations to which UFTDU is particularly grateful. The experts who contributed to the drafting of the report are listed in the Annex together with an short presentation of their professional background. The work of the experts was supervised and coordinated by Anton Giulio Lana and Andrea Saccucci, members of the Executive Board of the UFTDU.

6. Notably, the present report focuses on the following main issues that are of particular concern for the UFTDU: 1) Dissemination of information on the CEDAW and its Optional Protocol; 2) Violence against women; 3) Trafficking and exploitation of prostitution; 4) Women political participation and decision making; 5) Roma women and migrant women; 6) Refugee and asylum seeking women.

7. Each issue dealt with in the report has been identified by reference to the corresponding “issue” of the List of issues adopted by the Committee. Where deemed necessary, the team of experts has included in the text a recommended course of action that should be proposed to the attention of the Italian Delegation.

2. DISSEMINATION OF INFORMATION ON THE CONVENTION AND ITS OPTIONAL PROTOCOL AMONG ITALIAN CIVIL SOCIETY

2.1. Issue No. 7

8. The CEDAW Convention (henceforth “Convention”) promotes a model of “substantive equality” that encompasses:

- Equality of opportunity
- Equality to access of opportunity
- Equality of results

9. The conceptual framework is the recognition that **formal equality**, often displayed in a gender-neutral framing or policy or law, **may not be sufficient to ensure that women enjoy the same rights as men**. Thus, the Convention provides standards based on the notion that differences between men and women – whether based on biological (sex) differences and/or socially created (gender) differences – results in women’s disproportionate experience of disparity and disadvantage.

10. Italy has signed and ratified the Convention in 1985. The guarantees established by the Convention are far-reaching. However, the promises originating from its ratification and the reality of women’s lives in Italy remain significantly apart. Even if the Committee welcomed the Italian State party’s efforts to reaffirm the dignity of women and to protect them from all forms of discrimination, there is still a **substantial gap between the law provisions adopted to ensure women’s rights and their actual implementation in practice**.

11. Indeed, Italy has many laws and regulations on equal opportunities, but it doesn’t pursue any comprehensive action plan to ensure the achievement of their ultimate goals. The principle of equal opportunity is well grounded in the Italian Constitution (see Articles 3, 37 and 51). Moreover, Italy has implemented the European legislation on equality by Legislative Decree No. 215/2003, Legislative Decree No. 216/2003 and Law No. 76/2006. The Legislative Decree No. 198/2006 (OJ of 31 May 2006) is known as the “*Code of equal opportunities between men and women*”. The Legislative Decree No. 5/2010 (OJ No. 29 of 5 February 2010), amending the above mentioned Decree No. 198/06, strengthens the principle of equal treatment and opportunity between men and women and provides heavier penalties for the breach of the obligations ensuing therefrom. Law No. 183/2010 acts on the regulation of gender equality and women’s employment.

12. Despite those legislative provisions, **an action plan to ensure the effective realization of those equal opportunities is still missing**. Notably, the **dissemination of information about the CEDAW is still insufficient**.

13. The Minister of Equal Opportunities website only contains a link to the CEDAW web pages with **no access to translated documents** and there are no other official sources accessible to the general public in Italian language. The general recommendations,

the guidelines, the concluding observations and the views of the Committee **are not translated into Italian and no general information on their content is available** on the website of the relevant governmental institutions or in any other manner.

14. The CEDAW is generally **not invoked or relied on before the courts in cases of discrimination against women**: unlike for other UN human rights treaties, there is no relevant case-law on the application of the Convention at the domestic level.

15. The CEDAW is not included in the **academic curricula** or in the **training** of judges, legal professional and public officials. The Parliament itself never committed in increasing CEDAW's visibility or in monitoring its implementation.

16. The Optional Protocol to the Convention (henceforth "OP-CEDAW") should have been a way towards bridging the gap. The OP-CEDAW is a separate treaty that must be independently ratified or acceded to by States that are already parties to the Convention. Italy has signed and ratified it in 2000, but since then it was never used as a basis of equal opportunity policies, and, to date, it is unknown even to those institutions and actors who should care for its implementation and therefore for *de facto* realization of women's rights.

17. The OP-CEDAW has great relevance because of its capacity to ensure and enhance the actual enjoyment of women's rights. It has the potential to provide a heightened understanding of the full scope of the obligations ensuing from the Convention. It can therefore help **to strengthen the implementation of the Convention itself, to develop women's rights jurisprudence, to further the understanding of the standards laid down in the Convention, and to ensure the long-term promotion and evolution of women's rights in practice**. It also encourages States Parties to **identify and repeal existing discriminatory laws and policies**. Finally, the OP-CEDAW contributes **to increase public awareness of human rights standards relating to discrimination against women**.

18. The OP-CEDAW establishes two additional monitoring procedures:

- A communication procedure, regulated in Article 2, through which the CEDAW Committee (henceforth the "Committee") can consider complaints from individuals or groups of women, and decide whether the rights guaranteed by the CEDAW have been violated, and identify remedies for victims;
- An inquiry procedure, regulated in Article 8, through which the Committee can undertake *proprio motu* an inquiry into alleged cases of serious or systematic violations. Where warranted and with the consent of the State party, the Committee may visit the territory of the State Party. The Protocol includes an "opt-out clause", allowing States upon ratification or accession to declare that they do not accept the inquiry procedure.

19. Both, the individual communication and the inquiry procedures allow the Committee to issue its views and recommendations for addressing women's rights violations in particular contexts or situations as an instrument to further promote the implementation of the CEDAW at the domestic level.

20. In **Italy, both procedures are neither disseminated** among civil society and governmental officials, **nor fully integrated or used in national litigation strategies** to

advance the rights of women, **nor relied on by the relevant stakeholders in order to challenge discriminatory practices against women and to provide adequate redress for the violations of the Convention rights.**

21. The OP-CEDAW was ratified by the Italian Government without obtaining the previous authorization by the Parliament in accordance with Article 80 of the Italian Constitution and, so far, it has not been executed in the domestic legal system by a formal “order of execution”. This anomaly lies at the very source of the absence of knowledge, dissemination, awareness and application of the procedures set up by the OP-CEDAW. The fact that the OP-CEDAW was not duly authorized by the Parliament (in conformity with the usual practice followed with respect to international agreements establishing special monitoring or quasi-judicial mechanisms in the field of human rights) entails that:

- The ratification of the OP-CEDAW could be considered as invalid at the international level pursuant to Article 46 of the 1968 Vienna Convention on the Law of the Treaties;
- The ratification of the OP-CEDAW is not compatible with the Italian Constitution and any law implementing such instrument could be challenged before the Constitutional Court and repealed as being unconstitutional;
- The OP-CEDAW was not even executed in the domestic legal system and therefore its provisions cannot be applied by domestic courts nor relied on directly by women;
- The text of the OP-CEDAW has not been published in the Official Gazette and translated into Italian together with the law authorizing its ratification (since such law has not been adopted).

22. This is the main reason why the OP-CEDAW – after many years from the date of its entry into force – remains substantially unknown to public institutions, to private individuals and to civil society at large. It is even questionable whether a communication procedure under Article 2 of OP-CEDAW could be validly undertaken in the absence of any order of execution.

The Italian Delegation should be urged to provide accurate information about the procedure followed for the ratification of the OP-CEDAW and its compliance with the domestic constitutional framework.

The Delegation should moreover be requested to adopt adequate measures in order to ensure the full execution of the OP-CEDAW in the domestic legal system and its widest dissemination, inter-alia by publishing the Italian translation in the Official Journal.

In more general terms, the Delegation should be urged to substantially increase the efforts in order to ensure a wider dissemination to the general public of the CEDAW and its relevant practice, including by translating into Italian the main documents issued by the Committee.

3. VIOLENCE AGAINST WOMEN (THE CRIME OF STALKING)

3.1. Issue No. 14

23. The legislator's ideas contained in the Bill AC 1440 on measures against harassment and Bill AC 1424 on measures against sexual violence were implemented with Law Decree No. 11/2009, converted into Law No. 38/2009. This legislation introduced the **criminal offence of "stalking"** and some measures for all victims, including victims of sexual violence, but raises many concerns.

24. The new provision punishing the crime of stalking (Article 612*bis* of the Penal Code) appeared from the outset incomplete with regard to its legal structure, in terms of the precise description of the conducts constituting the offence, which seems to be too broad. The action of a stalker is punished when it causes to the victims a severe state of anxiety and fear or gives rise to a well-founded fear for their safety and that of their family. It is clear that these events are difficult to be ascertained because of their subjective character.

25. Furthermore, the required existence of a damage defined by reference to unspecified and subjective elements could weaken the new criminal offence, in the sense that the law provision could be repealed by the Constitutional Court in case of constitutional review. Such an outcome is the predictable consequence of a hasty choice influenced by emotional factors, which has moreover deprived Parliament of its primary function. In other words, a new "law" does exist, but rather than offering adequate solutions it raises in itself many problems of application.

26. In addition, **it is not sufficient to enact a law in order for its provisions to be effective, but it is necessary that all operators have the ability, preparation and sensitivity to apply the spirit and letter of the law.** With regard to the new legislative framework, no specific guideline has been adopted in order to allow a closer cooperation among all subjects operating in this area and to enable them to solve the difficult situations that may arise in practice.

27. The phenomenon of stalking in Italy is controlled both through a National Observatory and thanks to the initiative of the Police, sometimes with the help of universities that contribute to research activities.

28. A noteworthy instrument to this end named "S.I.L.V.I.A." (Stalking inventory list for victims and authors) has been developed. The system, which was set up before the adoption of Law No. 38/2009, is used by the law enforcement agency for the purpose of monitoring cases of stalking. It is a support tool for the investigators, which contributes to the understanding of the dynamics affecting the victim of continuing threats and harassment by third persons, known or unknown.

29. The systematic collection of data through SILVIA can also be used, on a national level, to monitor the spread and characteristics of both the author (stalker) and those who endure the persecution. This kind of survey makes it possible to develop strategies for effective enforcement. **Nevertheless, the system (SILVIA) is not being implemented uniformly throughout the country.**

30. Along the same lines, a national network of anti-violence (ARIANE) was created with a view to disseminate and implement actions on a national level carried out by local anti-violence networks, to counter the phenomenon of gender violence and to ensure the necessary connections between the Central Government authorities in the judicial, social, health, safety and public order sectors.

31. Law No. 38/2009 has envisaged the possibility to adopt “precautionary measures” for protecting the victims of stalking, which go so far as to restrict the freedom of movement of the stalker. For example, the so-called ban on “loitering in or near the places frequented by the victim” can be considered highly effective in that it ensures that victims are guaranteed immediate protection. According to data provided by the State Police a year after the law came into force, 1,313 orders of this kind were issued. Similarly, the so-called “warning” (admonition) - which is certainly a deflationary instrument of the judicial process that serves both as a deterrent and as an instrument of mediation between the victim and the stalker at the initial stage of stalking - has had encouraging effects (1020 steps in one year). The stalker is officially invited by the police to stop his harassing behaviour and in only 10% of cases the individuals who have been warned continue in their harassing conduct.

32. Criminal prosecution, however, seems unable to cure the symptoms that have their origin in cultural practices. **The official information campaigns, which can facilitate cultural progress, do not seem satisfactory.** Instead, it is worthy of note that popular initiatives were implemented in the form of collective protest against the recent distortion of the image of women. These forms of cultural protest principally take the form of spreading information to those channels that are unlikely to be censored (in particular, through the best known social networks). In spring 2011, there were two major popular campaigns, inspired and led by women, with these slogans, “I AM WOMAN, I AM” and “IF NOT NOW, WHEN?”.

33. Women are still today, as throughout the course of history, fighting for the freedom to be a woman. Among women’s rights, after the right to vote, education, employment, discrimination and so on, **the right not to be a victim is still not recognized.**

34. Despite the statements of principle, Italian policy moves with extreme caution and/or so slowly that Italy was not among the countries that signed the new Council of Europe Convention to Prevent and Combat Violence Against Women (CETS No. 210) during a ceremony held in Istanbul (May, 11th 2011) on the occasion of the 121st Session of the Committee of Ministers, involving Ministers of Foreign Affairs gathered from 47 Member States.

35. As far as the National Plan to combat violence against women and stalking (adopted by the Italian Government on December 2010) is concerned, it not possible at present to make a comprehensive assessments of its results. Nevertheless, there are objective reasons to fear that the Plan may remain only a declaration of intent. The Plan aims at translating into action what has already been stated by latest law on the matter. In particular, the plan aims on the one hand at promoting co-operation among the major actors involved in tackling the issue of violence against women and, on the other hand, at developing a strategy for the prevention and fight against violence, as well as a plan for the safeguarding, support and reintegration of the victims.

36. In fact, it is not clear how the funds necessary for pursuing each single objective are to be raised, or how they are to be assigned; little is said on the promotion of co-operation among those involved in the fight against gender-based violence; furthermore, there is no mention of the strategies aimed at bringing to the surface the vast hidden side of the phenomenon. It should be considered, at least, that the most recent data relating to the issue dates back to 2006 and it has to be updated taking into account the complaints filed with the law enforcement agency, the medical reports of first aid, as well as the calls made to the emergency telephone number 1522 and anti-violence centres, which are not homogeneously distributed throughout the territory. The results obtained from the above-mentioned sources will constitute an important basis for developing further analysis, although the knowledge of the facts will still remain incomplete.

37. The Plan foresees the promotion and carrying out of multi-disciplinary training for all the different kinds of operators involved in the care of victims of violence (police staff, medical operators, but also lawyers and judges of course). This is a key point on which maximum investment should be concentrated.

The Italian Government should be urged to revise Law No. 38/2009 on measures against sexual violence and harassment, in order to better specify the constituent elements of the crime of “stalking”, with the aim to guarantee an effective protection of victims; the Italian Government should be also urged to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence.

The Italian Government should be recommended to effectively implement its National Action Plan to combat all forms of violence against women; the Government should moreover be recommended to actually promote a stronger co-operation among different operators involved in the fight against gender-based violence and in the care of victims and to concentrate efforts on the multi-disciplinary training activities provided in the National Action Plan.

3.2. Issue No. 15

38. The National Statistics Institute’s survey published in 2006 and 2007, although important and significant, cannot comprehensively describe the picture of gender violence.

39. Over the past four years many things have changed, new laws have given greater power to women, who increasingly break their silence, but this has not made them less vulnerable.

40. In other words, the laws are not sufficient to implement a permanent change and it is also essential that adequate education is provided in order to achieve a cultural transformation. **Violence against women is rising steadily**, and every day it continues to be linked to a cultural problem, based on a lack of respect for “diversity” in general.

41. The press steadily increase their coverage of cases of gender violence, but most likely it is simply a question of increased attention to the news. Similarly, the official data shows an increasing numbers of complaints from women who find the courage to ask for help and to about the physical and psychological violence they have endured. This is only the top of the iceberg because today, like yesterday, the violence is often concealed or tacitly accepted. Violence (both psychological and physical) is often felt by women as shameful, and it is better not to speak about it. Despite the progress made in this field, women usually do not denounce violence suffered by unmarried partners, especially since the measures provided for their protection are not in fact effective. It is still very hard to break that bond of psychological subjection to which the victim is often reduced.

42. For the victim it is still very difficult from a psychological standpoint to face a criminal trial for the punishment of the guilty party, but here again it is a matter of “opinion” on a woman, rather than rules of the process. The statutory provisions and their practical application fail to provide adequate support.

43. It should be noted that there are no official statistics concerning the results achieved in the combating the violence against women, so it is not easy to find accurate information about the number of proceedings pending or the number of convictions for crimes of gender violence.

44. Unfortunately, it also occurs that the use of criminal justice is exploited; for example, among the rising number of the complaints that are being filed to the police there are many cases, which serve another purpose, notably that of obtaining civil benefits in related proceedings of separation between a husband and wife. This practice sometimes leads to a negative devaluation of the seriousness of some situations, but it also shows that there is a lack of legal protection for women even in the family. Sometimes women denounce the abuse by the former partner in order to obtain protection, especially as a mother and separated/divorced woman.

The Italian Delegation should be urged to strengthen systematic and regular collection and analysis of data and information on all forms of violence against women, by a) uniformly implementing law enforcement support instruments (e.g. S.I.L.V.I.A., anti-violence centers, 1522 emergency telephone number, etc.) throughout the national territory, and b) complementing official statistical data on gender violence with data collected by “alternative” sources (e.g. NGOs, first aid centers, etc.).

4. TRAFFICKING AND EXPLOITATION OF PROSTITUTION

4.1. Issue No. 16

45. The Bill AS1079 containing measures against prostitution, which aims at eradicating street prostitution, did not finish its legislative process and is still being considered by the Senate Committee since May 13th, 2009.

46. The regulation of forms of indoor prostitution is very complex. In fact, the so call “hidden prostitution” increases the vulnerability of the victims because they become less accessible by both the Police and the NGOs.

47. Experience demonstrates that, in order to undertake a path towards freedom and independence from the traffickers, it is necessary to allow the trafficked victims to immediately make use of the first assistance facilities and the residents’ permit, which effectively removes them from the state of involuntary illegality. Article 18 of the Law on Immigration and Article 13 of Law No. 228/2003 intervened in this context by providing for the creation of programmes of assistance and social integration, programmes of social protection for foreigners, in particular women and minors, who intend to escape from the violence and conditioning at the hands of those who are involved in the trafficking of people with the aim of sexual exploitation.

48. In reality, the peculiarity of the Italian system can be found in the social dimension that the Law encompasses and in the substantial balance between the victims’ needs for rehabilitation and the repressive needs of the State.

The Italian Government should be urged to promote the adoption of the Bill AS1079 containing measures against street prostitution.

4.2. Issue No. 17

49. Italy ratified the **Council of Europe Convention on action against trafficking in human beings** pursuant to Law No. 103/2010. By virtue of the order of execution contained therein, the Convention is applicable at the domestic level. However, the existing legal framework was not amended accordingly and this is likely to cause substantial problems for the interpreter in the application of the principles of the Convention.

50. First of all, in the absence of a precise internal rule, the requirement of Article 19 of the Convention, concerning “*criminalization of the use of the services of a victim*”, cannot fulfilled.

51. Raising awareness for the victims of trafficking and action to discourage “consumers” justify the use of deterrent measures aimed at reducing the so-called market demand that fuels all forms of exploitation (Article 6). The Italian law does not provide any measure directed at imposing sanctions on the customers of victims of trafficking. According to the Law No. 92/2008 local governments have been allowed to regulate street

prostitution on the assumption that such matter falls within their competence to “protect public safety and urban safety”. As a consequence, some mayors enacted specific orders providing fines for both prostitutes and their clients. However, such legislation was recently repealed by the Constitutional Court by the judgment No. 115 delivered on 7 April 2011, on the ground that it allowed mayors to adopt measures impinging on individual rights in breach of the principle of legality (Article 23 of the Constitution) and the principle of equality of citizens before the law (Article 3 Constitution).

52. Considering that trafficking is usually performed by transnational criminal organizations, it is necessary to promote enhanced judicial and inter-governmental co-operation with the State of origin of the trafficking fluxes. The European Union is elaborating a number of instruments aimed at improving cooperation among Member States, but an additional effort should be made in order to create new forms of judicial co-operation between Italy and other third country (such as Nigeria).

53. Trafficking is a crime which causes irreparable damage to the victim. Several studies have stressed that the physical and mental abuses suffered by the victims of trafficking, combined with economic exploitation, frequently lead to multiple traumas, anxiety and malnutrition, disease and sometimes death at the hands of traffickers. The victims are often alienated from their families and communities, partly because they have failed to live up to expectations and repay the family investment, partly because they cannot tell them about their experiences.

54. Although many measures have been taken at the national level, the right of the victims to seek damages and compensation still remains a problem. The right to compensation is in fact recognized in abstract terms, but in many instances it remains unfulfilled. In the Italian system, there are currently no legal means for obtaining the payment of compensation in cases where the convicted person does not possess sufficient financial resources. Therefore, despite the award of damages by a court, the victim often cannot recover the compensation from the author of the offence.

The UFTDU recommends the Italian Government to harmonize the existing national legal framework with the principles of the Council of Europe Convention on action against trafficking in human beings in order to remove difficulties of interpretation in the application.

The Delegation should be invited to involve third-countries in the fight against trafficking, adopting trans-national and judicial co-operation instruments.

The Italian Government should be moreover urged to adopt measures to guarantee the victim’s right to compensation, by setting up an aid fund for supporting victims of sexual violence.

4.3. Issue No. 18

55. The research conducted by the association “Parsec”, presented in May 2011, shows that in Italy trafficking concerns about 20/24 thousand people on the routes coming from

Nigeria and Eastern Europe. Nigerians girls are approximately 41.2% of the total, while the increase in the number of Romanian women reaches the total figure of 25%.

4.4. Issue No. 19

56. The Italian law shows an evident contrast of rules about the stay permits that are granted to the victims of trafficking.

57. In this respect, Article 10 of the Council of Europe Convention provides that each State shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence has been completed; moreover, pursuant to Article 14 of the Convention, the State parties shall issue renewable residence permit to victims when the competent authority consider that their stay is necessary owing to their personal situation and/or that their stay is necessary for the purpose of their co-operation in investigation or criminal proceedings.

58. In the framework of the Convention, the process of “identification” of the victim of trafficking plays an essential role as it constitutes the basis for the application of the guarantees provided for therein. The process of identification is independent from the outcome of the criminal proceedings against the traffickers, in the sense that it is not necessary to await their criminal conviction to either start or conclude the identification procedure described in Article 10. It is, in fact, common for the victims to be deprived of their identification documents by their traffickers. As a consequence, the victims of trafficking are at risk of being considered as irregular migrants by border control authorities and for this reason they could be removed from the territory without having access to any form of assistance or help.

59. By ratifying and executing the Convention in the domestic legal system, the Law No. 108/2010 did not adopt any specific rule for the “identification” of the victims of trafficking and for enabling them to have effective access to the measures of protection provided for by the Convention. On the contrary, the situation of the victims of trafficking is adversely affected by the emergency measures adopted by the legislator in 2009.

60. Indeed, the criminalization of the “*illegal entry and residence within the State*” by the so-called “*Security Package*” (Law Decree No. 11/2009 - Law No. 94/2009) has the effect of making the victims of trafficking to become themselves accused of a crime and of exposing them to the risk of removal to their country of origin without waiting for the identification process to be concluded.

61. According to the Convention, the identification process must be carried out by qualified and specially trained staff in cooperation with non-governmental organizations (NGOs). The legislative inconsistency in this respect is patent. On the one hand, the Italian legal system seeks to ensure the “contact” of the victims of trafficking with the law enforcement agencies (Polizia, Carabinieri, Guardia di Finanza, ecc.) for the purpose of their identification as victims with the support of social services and NGOs; on the other,

hand, it also imposes on the “qualified and trained” staff the obligation to report the illegal status of the victims for the purpose of prosecuting them on charge of illegal entry or stay in the country.

The Italian Government should be urged to harmonize the domestic legal system regarding stay permits and “identification” of victims of trafficking with the provisions contained in the Council of Europe Convention on action against trafficking in human beings in order to fully comply with the international guarantees provided to victims of trafficking.

5. WOMEN’S POLITICAL PARTICIPATION AND DECISION MAKING

5.1. Issue No. 20

62. Concerning § 20 of the list of issues, we consider that the Italian Government did not adopt sufficient measures to comply with Committee Recommendations No. 27 and No. 28 (CEDAW/C/ITA/CC/4-5).

63. Despite of the amendment to Article 51 of the Constitution, by which in 2003 the principle of gender equality in the access to public and elective offices was introduced, and regardless of special measures that have been taken, in particular concerning gender quotas envisaged in local electoral legislations or in political parties internal regulations, few progress has been achieved to guarantee *de facto* gender equality and to comply with Articles 7 and 8 of the CEDAW Convention.

64. According to the Global Gender Gap Report 2010 published by the World Economic Forum¹, Italy is positioned in 74th rank (out of 134 countries) of the gender gap index 2010 with 0,677 score (0,00 = inequality, 1,00 = equality). Furthermore, the report shows that from 2008 to 2010 there has been a decreasing tendency². Analysing gender gap sub-indexes it emerges that the main area of inequality in the representation of women appears in the female political empowerment: the percentage of women in Parliament amount to 21% and in ministerial positions amount to 22%. The number of women elected at local level and designated for local governments reflected the same gap as at the national level. As an example, even if the statute of the municipality of Rome contains in Article 5 the guarantee of balanced representation of women and man in the government³,

¹ *The Global Gender Gap Report 2010*, World Economic Forum, Geneva, Switzerland, 2010; to be consulted also: www.weforum.org/issues/global-gender-gap

² In 2009, Italy got the 72th rank and the score decreased from 0,679 in 2008 to 0,677 in 2010. *The Global Gender Gap Report 2010*, pages 170 - 171.

³ Article 5 of the Statute of the Municipality of Rome, on the principle of equal opportunities in the nominations, reads as follows: “*Nel nominare i componenti della Giunta Comunale, i responsabili degli uffici e dei servizi nonché nell’attribuire e definire gli incarichi dirigenziali e quelli di collaborazione esterna, il Sindaco assicura una presenza equilibrata di uomini e di donne, motivando le scelte operate con specifico riferimento al principio di pari opportunità*”.

only one woman has been nominated as town councillor by the Mayor (on February 2011) with regard to a whole of 12⁴.

65. Neither the State report (CEDAW/C/ITA/6) nor the responses to the list of issues (CEDAW/C/ITA/Q/6/Add.1) clarify what has been done to comply with Committee Recommendation No. 28 regarding the representation of women in the judiciary and at the international level.

66. Gender equality in State competitions to take up career in both the judiciary and in the international diplomatic services is guaranteed by the Italian Constitution, by legislative decrees that regulates the access to public offices⁵, as well as by ministerial decrees regarding publication of tenders, which in some cases encourages particularly applications of women⁶.

67. Nevertheless, data analysis shows that even if gender equality in access to such public offices are guaranteed by law and that the number of women applying to State competitions has been rising in the last years, the number of those that pass such competitions and that are employed is far to be equal in relation to men. In the last competitive examination for entering in the diplomatic service (2010), 54,62% of applicants were women but only 31,71% were actually employed; from 2003 to 2010 no more than 29,78 % women have been admitted to the diplomatic service⁷.

68. Regarding the representation of women in senior and managerial positions, the situation is even worse. Indeed, we believe that, legitimately, the principle of gender equality in the access to public and elected offices is an important subject of public discussion, but much less is discussed about the huge *de facto* obstacles that exist in the opportunities for career promotion for women even in cases where the promotion should be automatic.

69. According to the data provided in April 2010 by the Italian diplomatic and managerial women association (Associazione donne italiane diplomatiche e dirigenti - D.I.D), established at the Italian Ministry for Foreign Affairs, about the presence of women in the diplomatic service, out of 31 appointed Ambassadors only one woman was elected by the Government; against a total of 123 Embassies only 6 head of missions are women; out of 9 permanent representations only one is directed by a woman⁸.

70. Concerning the judiciary, the situation is not better. According to the data provided by the Association of Italian female judges (Associazione donne magistrato

⁴ The question has been addressed by the Lazio Administrative Tribunal.

⁵ The access to the judicial service is regulated by Legislative Decree 160/2006, as amended by Law No. 111/2007.

⁶ See Ministerial Decree DM/5015 n. 0095bis, published in the Official Gazette, 25 March 2011.

⁷ For further information, see:

www.esteri.it/MAE/opportunita/Al_MAE/CarrieraDiplomatica/ConcorsoDiplomatico/2011/20110512_st_at_diplo.pdf

⁸ For a more complete picture, see the association's website: www.donne-esteri.org

italiane - ADMI) in June 2009, 10 women were head of a Tribunal against a total of 134, 8 women were head of a Public Prosecutors Office out of 141, only one woman was head of an Appeal Court, only one woman was head of Division of the Court of Cassation, while no women were in office as head of the Public Prosecutors Office in Appeal Court or at the Court of Cassation⁹. The demographer Rossella Palomba, researcher of the National Research Council (Consiglio nazionale delle ricerca - Cnr), claims that if the employment of women at these levels of career grows at such rhythm, the gender equality in the judiciary will be reached in 2601!

71. The under-representation of women in managerial positions is such marked that this deficit cannot be justified anymore by the minor seniority of women¹⁰. It is necessary, firstly, to analyse the causes of this phenomenon, that are also and still linked to gender prejudices (suffice to say that, according to the Global Gender Gap Report 2010, the female-to-male ratio regarding the estimated earned income is 0.50; it means that a woman in the same position as a man gains the half)¹¹.

72. Secondly, it is necessary to take sustained actions to increase concretely the number of women in political, public and managerial positions. On the one hand, such actions should be of legislative nature, including the use of temporary special measures, such as gender quotas, but also introducing more adequate instruments supporting maternity within welfare policies, so that women should no more be obliged to choose between career and family. This is one of the main obstacles that lead women themselves not to accept or to seek promotion for more managerial positions even if they have the skills and the opportunity guaranteed by law¹².

73. On the other hand, it is recommendable to reinforce existing entities that are in charge of sustaining the rights of women and of fighting against discrimination, established within public bodies. An example is the Committee for Equal Opportunities at the Magistrates' Governing Council (Comitato per le pari opportunità presso il Consiglio Superiore della Magistratura – CSM) set up in October 1992¹³. The Committee has the duty to devise opinions and recommendations in order to remove persisting obstacles to the full respect of the principle of gender equality in the work of the judges¹⁴. Moreover, it has the duty to carry out initiatives with the intent to remove working conditions that provoke adverse effects to women and, significantly, to implement appropriate measures within the management of work, with the purpose to establish a balance between family

⁹ For a more complete picture of the data, see the association's website: www.donnemagistrato.it

¹⁰ The first public competitive examination for entering in the judiciary open to women candidates was proclaimed only in the year 1963.

¹¹ *The Global Gender Gap Report 2010*, pages 170 – 171.

¹² Concerning, in particular career promotion in the judiciary, the availability to move from one city to another is requested, often obligating judges to live far away from their families.

¹³ The Committee was created in October 1992 with the aim to put Law n 125/1991 into effect concerning gender equality at work places; the Committee is currently regulated by Decree 20 February 2006 (G.U. n.50, March 2006).

¹⁴ See Decree 20 February 2006 (G.U. n.50, 1 March 2006).

and professional responsibilities¹⁵. It is important to say that in 2008, decentralized Committees for Equal Opportunities have been instituted at local judicial Councils.

74. We consider that such Committees, as well as women rights associations in the various sectors of public employment (as the before mentioned ADMI and D.I.D), should be sustained and reinforced by providing them with appropriate means of actions to ensure effective changes in the mentality and in the practice, to guarantee access of women to senior positions within each public body.

75. With reference to the observation contained in § 20 of the list of issues regarding adequate representation in political and public positions of Roma and migrant women, we consider that the Committee's Recommendation No. 28 has been completely disregarded by the Italian Government. Notably, neither the State report¹⁶ nor the responses to the list of issues¹⁷ take these topics into account.

76. In Italy, migrants from third countries don't have right to vote neither in national nor in local elections. In some municipalities, the election of so called "associated councillor" (consiglieri aggiunti) is foreseen, but migrants elected for such position do not have the right to vote in the city councils but only a consultative function. So far, the principle of an adequate representation of migrant women in political positions is not even discussed.

77. One first step should be the ratification of chapter C of the Convention of Council of Europe on the participation of foreigners in public life at local level concerning the right to vote in local authority elections¹⁸. This could be a basis on which a legal framework should be elaborated in order to regulate the participation of foreigners in local elections and in which the principle of gender equality should be introduced.

78. Furthermore, we claim that the principle of gender equality should be included in the rules regarding election of "associated councillors".

The Italian Delegation should be invited to promote the adoption of appropriate legislative measures and welfare policies in order to overcome the obstacles for a *de facto* gender equality in the access to public, political and elected positions and for an equal female representation in senior and managerial positions. In this context, special measures, such as gender quotas, could be envisaged in order to ensure adequate women representation in decision-making public entities and institutions.

The Italian Delegation should moreover be recommended to adopt a legal framework ensuring participation of Roma and migrant women in the political and

¹⁵ For more information, see also www.csm.it/PariOpportunita/pages/documenti.html.

¹⁶ CEDAW/C/ITA/6

¹⁷ CEDAW/C/ITA/Q/6/Add.1

¹⁸ Convention on the Participation of Foreigners in Public Life at Local Level, European Treaty Series - No. 144, 5 February 1992; to be consulted: www.conventions.coe.int.

public life and in decision-making bodies at local level. The Delegation should be urged to accept as binding chapter C of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

6. ROMA WOMEN AND MIGRANT WOMEN

6.1. *Issue No. 30*

79. Despite a few particular initiatives aimed at fostering the quality of life and the socio-economical integration of Roma and migrant women, those women are still victim of intersectional discrimination because of their being women *and* because of their particular national, cultural or ethnical condition.

80. In recent years, Italian society has experienced a particularly worrying increase in racist and xenophobic attitudes towards persons belonging to vulnerable groups such as the Roma and Sinti, migrants, asylum-seekers and refugees. Such hostile attitudes are sometimes found also at institutional level and they are increasingly present in political discourse and media¹⁹.

81. Roma and Sinti populations suffer the effects of social exclusion in almost all areas of life, including housing, education, healthcare, employment, and the ability to obtain legal protections and legal status²⁰. In the Report following the visit to Italy on 13-15 January 2009, Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, notes “the continuation of an intolerant climate vis-à-vis Roma and Sinti, the lack of an institutionalized dialogue between the authorities and Roma and Sinti and the persistence of unacceptably low standards of living in a number of Roma settlements, especially those inhabited by migrants and their families.”²¹

82. No significant improvement has taken place since that time. As recently acknowledged by the Advisory Committee on the Framework Convention for the

¹⁹ See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Italy*, adopted on 15 October 2010, published on 30 May 2011, ACFC/OP/III(2010)008.

²⁰ The social situation of Roma and Sinti populations in Italy has been under the attention of relevant European human rights bodies. In its decision on merits concerning collective complaint No. 58/2009 (*Centre on Housing Rights and Evictions (COHRE) v. Italy*), 25 June 2010, the European Committee for Social Rights concludes for the violation of Article E (non-discrimination) in conjunction with a number of rights granted by European Social Charter (right of the family to social, legal and economic protection, right of migrant workers and their families to protection and assistance, right to housing). Previously, in its decision on the merits of collective complaint No. 27/2004, *European Roma Rights Centre (ERRC) v. Italy*, 7 December 2005, the Committee had already concluded that the housing situation of Roma people in Italy was in violation of Article E of the European Social Charter, read in conjunction with Article 31 (right to housing); in the follow-up of this decision, in 2007, the Committee noted that the non-compliance with the Charter had not been redressed.

²¹ CommDH(2009)16, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009*, 16 April 2009. Such a situation had already been deplored in the Memorandum of 28 July 2008 (CommDH(2008)18) and in the Report of the former Commissioner of 14 December 2005 (CommDH(2005)9).

Protection of National Minorities, the measures taken to improve the social and economic situation of the Roma and Sinti, and to reduce disparities between them and the rest of the population have had very limited scope and impact, since they are almost exclusively taken at the local level or by some NGOs. In the absence of specific legislation at national level and of a comprehensive strategy for their protection, their situation has seriously deteriorated and these persons are currently facing poverty, hostility and systematic discrimination in most sectors²².

83. Government responses to the list of issues affirms that “housing and educational policies aimed at moving Roma families from camps to houses and children to attend schools indicate a positive trend” (paragraph 285). The reality seems to be quite the opposite. The eviction of Roma and Sinti camps has been realised under the provisions of ministerial decrees declaring the “state of emergency in relation to settlements of nomad communities”. Those decrees have been approved on the grounds that “the presence of numerous irregular third-country citizens and nomads who have settled in a stable manner in urban areas [...] has caused an increase in social alarm, with serious incidents that seriously endanger public order and security”²³.

84. It is evident from the wording of the decrees and orders that their aim is the protection of public order, rather than the establishment of a comprehensive strategy of integration respecting the right of Roma and Sinti population to preserve their identity and culture²⁴. Indeed, in most cases **the eviction of Roma camps is carried out without any prior notice and without providing people an alternative and permanent solution**²⁵. That practice has a serious impact on their family life and especially on the right to education of children, girls and boys. In fact, children that attend school – yet with many difficulties – are forced to move away, making the school attendance more and more difficult; furthermore, because of the sudden evacuation and the destruction of their mobile homes and huts, books and other school materials are lost.

85. Moreover, the use of emergency orders and the continuous institutional and political discourse focusing on the danger that the presence of Roma poses for public order and security - and painting Roma people as potentially dangerous and prone to commit crimes - fosters the spread of stereotypes and stigmatization which result into an increasing segregation and discrimination, in particular as regards **access to employment of Roma women**.

²² *Third Opinion on Italy*, adopted on 15 October 2010, published on 30 May 2011, ACFC/OP/III(2010)008.

²³ See Decree of the President of the Council of Ministers of 21 May 2008, *Gazzetta Ufficiale* No. 122 of 26 May 2008, *Declaration of the state of emergency in relation to settlements of nomad communities in Campania, Lazio and Lombardia*.

²⁴ Even the European Parliament expressed “concern at the affirmation - contained in the administrative decrees and orders issued by the Italian Government - that the presence of Roma camps around large cities in itself constitutes a serious social emergency with repercussions for public order and security” (Resolution 2008/0361 of 10 July 2008).

²⁵ Among others, the evacuation of the camps of Ponticelli near Naples (May 2008), via Rubattino in Milan (about 200 people, 40 children, in November 2009), via Sant’Arialdo in Milan (about 150 people, on 22 January 2010), via del Baiardo in Rome (May 2011) are to be mentioned.

86. The approach of public authorities on immigration matters and the treatment of migrants is very similar to that concerning the Roma, both being characterised by undue focus on security policies. Law Decree (Decreto legge) No 92/2008, on “Urgent Measures in the Field of Public Security” (amended and converted into law by Law No. 125/2008 of 24 July 2008), and Law No. 94/2009 of 15 July 2009, on “Provisions on Public Security”, significantly affect the living condition of migrants (both regular and irregular). Law No. 94/2009 introduced the **crime of irregular immigration** (new Article 10-*bis* of Legislative Decree No. 286/1998), incriminating the simple fact of entering or staying into the territory without regular permit (“reato di clandestinità”)²⁶. By putting out of the law any person without a valid residence permit²⁷, the legal system forces these people to segregation.

87. This situation particularly hampers **the access of women to the most basic services, including health and maternity services**. According with the first draft of Law No. 94/2009, doctors and medical personnel would have been obliged to report to the police foreigners without regular residence permit requiring hospitalization or medical visit. In the end, such a rule has not been approved. Nevertheless, because of misleading information, irregular women are still deterred from going to hospital and tend to turn out to private underground circuits, with a very harmful impact on their health, namely in the sexual and reproductive sphere.

88. Law No. 94/2009 also introduced a number of provisions affecting everyday life of regular migrants, and whose relevance for “Public Security” is at least questionable. For example, Article 18 makes the registration of residence (“iscrizione e variazione anagrafica”) conditional on the respect of housing standards established by law. Such standard are quite high and it is difficult for economically disadvantage people, as often migrants are, to rent or own houses complying with these standards²⁸. As social services and welfare – for example, aid for **childcare or kindergarden** - are often provided by local authorities on the basis of residence registration, **migrant women risk to be indirectly discriminated in access to those services**.

89. Beyond the discriminatory effects of Law No. 94/2009, **direct and indirect discrimination against migrant women in access to welfare benefits** are brought about by local legislation establishing criteria for the attribution of such benefits. In some cases, such provisions are declared unlawful and void by the Italian courts; nevertheless, it

²⁶ The law provision in question is still in force in the Italian criminal law notwithstanding the judgment delivered by the Court of Justice of European Union on 28 April 2011 in the case C-61/11. The aforementioned judgment concerns a different criminal offence laid down in Article 14(5b) of Legislative Decree No. 286/1998.

²⁷ The rule applies even to people who legally entered the territory and were holding a residence permit, but were refused renewal.

²⁸ Some municipalities have established excessively high standard of housing with a clearly discriminatory purpose. See Order No. 1684/2011 issued by the Tribunal of Vicenza, concerning the housing criteria fixed by the Municipality of Montecchio Maggiore.

is necessary to apply to the court in order to avoid discrimination and victims are often not in a position to undertake legal proceedings²⁹.

In general terms, the UFTDU considers that the Italian Delegation should be urged to elaborate specific legislative and administrative measures at the national level to improve the social and economic situation of Roma and Sinti, in particular concerning the female population. Taking into account the Roma community's vulnerability, such measures should also foreseen positive actions to correct *de facto* inequalities and to facilitate the school attendance of Roma children and the access to housing and employment by Roma women.

The Italian Delegation should be recommended to undertake appropriate initiatives to remove any form of discrimination against women belonging to the Roma and Sinti community. To this end, the Delegation should be urgently requested to take effective measures to prevent and punish any racial and xenophobic attitude or conduct against Roma and Sinti, in public and political debates, as well as in the media.

The Italian Government should moreover be urgently required to stop eviction of Roma camps without providing alternative housing solutions and to eliminate direct and indirect discrimination of migrant women in access to welfare benefits, in particular concerning maternity and health services.

6.2. Issue No. 31

90. In its responses to the list of issues (§ 287) the Government refers to Law Decree No. 78/2009 (converted into Law No. 102/2009, especially Article 1-*ter*) as the main measure adopted to protect migrant workers from exploitation and abuse. The impact of that legislation has to be reappraised.

91. First of all, the legislation in question only allows regularizing foreign workers irregularly employed for family assistance and support activities. As a consequence, workers employed in all other sectors (agricultural, construction, industry and handicraft) are excluded from the possibility of regularization. Furthermore, such legislation confines women migrants to domestic work. Secondly a great number of applications were rejected because the applicants were previously issued a deportation order and were therefore guilty

²⁹ The most relevant example is the regional welfare legislation of Friuli Venezia Giulia, which subordinates the granting of social benefits on a permanent residence of at least 10 years in the region. The European Commission has started an infringement procedure (No. 2009/2001) against Italy concerning this regional legislation.

of the crime of illegal permanence in the national territory under Article 14(5b) of Legislative Decree No. 286/1998³⁰.

The Italian Delegation should be recommended to set up a comprehensive legislative framework to protect migrant workers from exploitation and abuses, adopting adequate measures to facilitate access of migrant women to all sectors of employment.

7. REFUGEE AND ASYLUM-SEEKING WOMEN

7.1. *Issue No. 32*

92. As acknowledged by the Government, no specific provision mentioning **female genital mutilation** (FGM) as gender-based form of persecution is provided by the relevant legislation concerning asylum and international protection. Nevertheless, Legislative Decree No. 251/2008 considers as acts of persecution “acts of physical or mental violence, including acts of sexual violence” (Article 7(a)) “acts of a gender-specific or child-specific nature” (Article 7(f)).

93. Actually, the real problem seems to be the **access to asylum procedures** rather than the recognition of gender based persecution. As a consequence of **interception and refoulement at sea**, refugee women seeking protection are repatriated to North Africa non-safe countries without any assessment of their individual situation and without considering the fact that this may expose them to persecution and torture and inhuman and degrading treatments, namely sexual violence. The push-back policy was massively implemented in 2009 and 2010 according to the Agreement of Friendship with Libya (according to the latest information available, more than 1.000 migrants, including children and pregnant women, have been pushed-back to Libya), and the co-operation agreement with Algeria. The European Committee for the Prevention of Torture stated that the 2009 interdiction operations were conducted in violation of the prohibition of torture and ill-treatment³¹.

94. Pushback operations have been reduced following the revolutionary events that have affected the countries of North Africa in the recent months. Nevertheless, the Government’s willingness to resume pushback operations on a large scale is evident. On 11 April 2011, an agreement concerning maritime border control and repatriation has been signed with Tunisia³². On 17 June 2011, a new agreement has been signed with the Libyan temporary government; commenting this agreement the UNHCR denied any kind of

³⁰ After the judgment of the Court of Justice of European Union in the case C-61/11, those denial are under review.

³¹ CPT/Inf (2010) 14, published on 28 April 2010. UNHCR too strongly condemned the push-back policy.

³² See http://www.esteri.it/MAE/IT/Sala_Stampa/ArchivioNotizie/Approfondimenti/2011/04/20110406_Accordo_ItaliaTunisia.htm

involvement in such operations and reiterated its firm opposition to any action of *refoulement* at sea of migrants heading to the Italian coasts³³.

95. Moreover, when they arrive in Italy through Greece, **women are systematically redirected to Greece according to Regulation No. 343/2003/EC** (Dublin Regulation), where they risk to be subjected to treatment incompatible with human dignity and they are likely to be returned to the country from which they had fled (such as Afghanistan, Sudan, Eritrea)³⁴.

96. A further issue concerns reception and inclusion facilities provided by the SPRAR (Sistema di protezione per richiedenti asilo e rifugiati). It has to be acknowledged that only a part of asylum seekers and refugees have access to the system. In 2008, on 31.097 asylum applications lodged with Local Commission, only 8.412 persons acceded to the SPRAR system. In 2009, on 17.603 applications, 7.495 seekers acceded the system³⁵. Furthermore, the emergency determined by thousands of asylum seekers coming from Libya and Tunisia from January 2010 has had only extremely precarious solutions.

The Italian Government should be urged to fully honor their *non-refoulement* obligation under international human rights law and international refugee law, by avoiding that migrants rescued at sea, particularly women and children, are returned to non-safe countries and by ensuring that they are granted effective access to asylum procedures.

The Italian Delegation should also be invited to take wide-ranging measures to ensure appropriate reception conditions for refugees and asylum seekers, taking into account in particular the increasing number of asylum seekers arriving from the north of Africa.

³³ See http://www.tnnews.it/web/sezioni/top10/20110616_162000.shtml. See also ASGI (Associazione Studi Giuridici sull'Immigrazione) press release at http://www.asgi.it/home_asgi.php?n=1679&d=it.

³⁴ See, *inter alia*, the pending case before the ECHR, *Sbarifi and others v. Italy and Greece* (Application No. 16643/09); for the assessment of the Greek situation concerning the treatment of asylum seekers see ECHR, *M.S.S. v. Belgium and Greece* (Application No. 30696/09), Judgment of 21 January 2011.

³⁵ Settore Accoglienza e monitoraggio del Servizio centrale dello SPRAR, *I numeri dell'accoglienza*, 2010.

8. ANNEX

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Rome, 27 June 2011

Mr. Mario Lana
(President of the UFTDU)

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line and a vertical line ending in a small flourish.