



General Assembly

Distr.: General
21 June 2012

English only

Human Rights Council

Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum

**Mission to Italy: comments by the State on the report of the Special
Rapporteur***

* Reproduced as received.

I. Introduction

The Italian Constitution

1. The Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*) was enacted on December 22nd, 1947. The text, which has been amended 13 times, was published in *Gazzetta Ufficiale* (No.298) on 27 December 1947. The Constitution entered into force on January 1st, 1948 (Please refer to Annex No.1 for further details).

2. The Constitution is composed of 139 articles (four of which were later abrogated) and made of three main parts: Fundamental *Principles* or *Principi Fondamentali* (Articles 1–12); Part I concerning the *Rights and Duties of Citizens* or *Diritti e Doveri dei Cittadini* (Articles 13–54); and Part II the *Organisation of the Republic* or *Ordinamento della Repubblica* (Articles 55–139); followed by 18 *Transitory and Final Provisions* or *Disposizioni transitorie e finali*. Articles 13–28 are the Italian equivalent of a Bill of Rights in common law jurisdictions. Power is divided among the executive, the legislative and judicial branches; the Constitution establishes the balancing and interaction of these branches, rather than their rigid separation.

3. Under Article 139, the republican form of government cannot be reviewed. When the Constituent Assembly drafted the Constitution, it made a deliberate choice in attributing to it a supra-legislative force, so that ordinary legislation could not amend or derogate from it. Legislative acts of parliament in conflict with the Constitution are subsequently annulled by the Constitutional Court.

4. In this regard, it is worthy of mention the role played by the Constitutional Court that deals only with infringements of specific constitutional law (Arts.134 ff. of the Italian Constitution). For example, the constitutional court has the power to abrogate any legislation which is not in line with the Basic Law, both in terms of form and substance. Complaints of unconstitutionality may be lodged at the Court, by whomever, in the course of either a criminal or a civil proceeding, claims that his or her basic rights have been infringed by an Act, which might be unconstitutional.

5. The protection of human rights and fundamental liberties is thus enshrined in the Italian Constitution. This envisages the protection of all rights and fundamental freedoms as included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Human Rights Universal Declaration or the International Covenant on Civil and Political Rights. The protection and promotion of rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the rights of the child and of women constitute one of the fundamental pillars of both domestic and foreign Italian policies.

6. The Italian legal system aims at ensuring an effective framework of guarantees to fully and extensively protect the fundamental rights of the individual, providing with a wide range of protection measures. Therefore, in developing new legislation, the Italian Government recalls and fully complies with the Italian Basic Law, particularly the constitutional principles, as well as with international obligations. Along these lines, Italy's policies are forged in light of the EU's legislation, aims and purposes, in particular in the areas of the integration process, the right to freedom of movement and asylum. More importantly, the Basic Law determines the political framework for action and organization of the State.

7. The structural principles of the constitutional system, governing the organization of the State are as follows: Democracy (as laid down in Article 1 of the Italian Constitution); The so-called *personalistic* principle (as laid down in Article 2 of the Italian Constitution),

which guarantees the full and effective respect for human rights and human dignity; The pluralist principle, within the framework of the value of democracy (Arts. 2 and 5 of the Italian Constitution); The importance of labour, as a central value of the Italian community (Arts. 1 and 4 of the Italian Constitution); The principle of solidarity (Article 2 of the Italian Constitution); The principle of equality and non discrimination (as laid down in Article 3 of the Italian Constitution). The latter is also the basic criterion applied in the judiciary system when bringing in a verdict; The principles of unity and territorial integrity (Article 5); and, above all, the principles of the welfare state and the rule of law. In our view, the basic rule, if any, which should guide modern democracies in the protection of rights is the effective implementation of the principle of non-discrimination. The latter is, indeed, one of the main pillars of our constitutional code, upon which the domestic legislative system is based: “All citizens have equal social status and are equal before the law, regardless of sex, race, language, religion, political opinion, and personal or social conditions. It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country (Art. 3 of the Italian Constitution)”.

8. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. More generally, when an Italian legal provision apparently seems to affect the basic individual needs expectations, in reality we are facing a "*modus operandi*", aimed at protecting fundamental rights, such as the right to life, personal freedom and security. This is somehow a method of “damage containing”; by which a higher requirement is protected while other simply legitimate requirements of the individual are temporarily compressed. However, it is important to emphasize that no arbitrary conduct against fundamental freedoms is allowed by the Italian legal system. Whenever the Constitutional Court declares a specific legislative measure illegitimate, it immediately ceases its effects.

II. Specific observations

9. Provided the above constitutional framework, Italy kindly requests that the following elements be considered and if possible reflected in the report under reference:

Footnote 7, pag.4 of your report - 7. Senate of the Republic – Extraordinary Commission for the promotion and promotion of human rights '*Rapporto conclusivo dell'indagine sulla condizione di Rom, Sintì e Camminanti in Italia*', February 9 2011, p.18 (grammar errors in the Italian version).

10. PARA.9: Mr. Monti took up the position of PM together with the new Council of Ministers, after receiving the confidence by the Italian Parliament on November 17-18, 2011. From a Public Law standpoint, he is currently running a technical Government. In your report, it is mentioned the reference to “administrative care-takers”, in our understanding this applies to those in charge of “ordinary administration measures” which is not the case with the current Italian Government. More specifically, you also mention, "Representatives of this Government acknowledge their limited power to introduce widespread legislative changes, and that their main objective is to focus on structural economic reform". In this regard, it is of the utmost importance to consider the two following elements: 1. In compliance with Art.60 of the Italian Constitution - whereby "the Chamber of deputies and the Senate of the Republic are elected for five years. The term for each House may not be extended, except by law and only in the case of war" -, there will be new Parliamentary elections in the course of Spring 2013, entailing the election of new parliamentarians, a new Parliament (a new Legislature) and new Government: all the pending bills and draft laws thus will have to be re-submitted before the new Parliament for

continuing their course of action. For sake of clarity it should be also included a reference to the above and thus it would be more appropriate to mention that the current technical Government has limited time at its disposal; 2. Secondly, considering the current international and European juncture, besides the incoming general elections, the current Government has decided to focus on the areas of major concern, such as economy and labour market - the situation of which is mainly aggravated by the effects of the international and regional economic crises. The domestic juncture has strongly impacted on the programme of work of the current Government. In this regard it might be of your interest the statement delivered by Mr. Monti, on November 17, 2011, on the thick programme of work of the Government (<http://www.governo.it/Presidente/Interventi/dettaglio.asp?d=66019>). It should be considered as a way of example, that this Government has already adopted the most important pension reform ever, as well as the first National Strategy for the Social Inclusion of Roma, Sinti and Caminanti communities.

11. PARA.10: At the end of para.10, it should be considered that the process of fiscal federalism is still ongoing. Specific adjustments have been envisaged by those measures, known as "saving Italy and simplifying Italy", as recently adopted by the current Government (in this regard, further official indications can be retrieved from: www.camera.it/470?stenog=/dati/leg16/lavori/stenbic/62/2012/0201&pagina=s020).

12. PARA.11: Gender stereotypes, which predetermine the roles of men and women in society, are deeply rooted(FOOTNOTE 13). Italian women carry a heavy burden in terms of household care, while the contribution of Italian men is amongst the lowest in the world. (FOOTNOTE 14) In particular working women devote to housework three times more the time dedicated by men: 3.68 hours on average per day versus 1.23 for men. In 2008-2009, 76.2% of family labour is still borne by women, a value slightly lower than the one recorded in 2002-2003 (77.6%). However, it is raised, albeit slightly, the involvement of men in family work, both in terms of participation and time invested. (ISTAT, Time Use Survey, 2008). As mentioned in the Italian statement before the CEDAW Committee in July 2011, the Department for Equal Opportunities has signed an MoU, with the Institute of Advertising Self-Regulation (acronym in Italian, IAP), on June 20, 2011, in order to ensure that all mass media provide a correct image, in particular of migrants and women. In the event of advertisement contrary to the dignity of women, they are withdrawn within 48 hours, upon decision of an ad hoc Committee. From the academic year 2011/2012, it has been envisaged that each school will organize awareness-raising campaigns and human rights education trainings for teachers and students. In particular, further to an MoU on "the promotion of the gender culture in the school system", signed on June 15, 2011, each school has to set up working groups on equal opportunities and gender diversity, in cooperation with civil society. ISTAT has also conducted a specific survey on gender-based stereotypes, discrimination and prejudices, whose results will be made available by the end of 2012.

13. PARA.12: Regarding the presence of women in Law Enforcement, there is no reference to the State Police, where the percentage of women in different ranks is 14,9 % of the total personnel, meaning that among them, one woman every 100, with proper qualifications, can reach senior management positions. As for the Carabinieri Corps and more generally the women employed in the Armed Forces, the rationale behind the current situation was clearly expressed, in particular, in the first National Report on Women, Peace, and Security, dated December 2010, of which we report below the relevant section in its entirety:

14. "Presence of women in Armed Forces. Women are an essential component of both the Italian police and armed forces. The State Police has included women since 1959 (in the so-called "women's corps"), making it the first Italian police force to do so. Although their duties were initially limited to the protection of minors, a new public security law adopted

in 1981 (121 of 1 April 1981) made official equal opportunities between men and women. This 1981 police reform placed male and female staff on equal footing for career advancements and performance of functions. Women and men thus participate in the same competitions, initial training, specialization and advance training courses. At present, there are women chiefs of police (“questori”), senior police officers at headquarters and on patrol, and directors of educational institutes. Others are helicopter pilots and instructors in target practice, self-defense, operational techniques and driving school. As of February 1, 2009, there were a total of 14,879 women, of whom 13,128 were assigned to patrolling duties (out of 100,035 officers in the State Police) and 1,751 to technical, clerical or managerial duties (14% of the total force: this figure increases to 32% when the managerial and executive level are included). State police training (including basic training and refresher courses) focuses on assistance to crime victims and to other sensitive issues, such as domestic abuse or violence. Police officers deployed in conflict areas receive training in international human rights law, in particular the protection of vulnerable groups such as women and children.

15. As for the voluntary enlistment of women in the military service, Act No. 380/1999 (subsequently amended by Legislative Decree No. 66/2010, which contains the Military Code) has granted women’s access to the Armed Forces.

Legislative Decree No.24/2000 provides for the voluntary recruitment, status and career advancement of women in the military. This law was later incorporated into Legislative Decree No. 198/2006, "Code on Equal Opportunities between Men and Women," and was recently amended by Legislative Decree No. 66/2010. Article 1, paragraph 6, of Act No.380/1999, established the yearly maximum quotas for the recruitment of women in various roles, bodies, groups, and specializations of each armed force, as decided by the Minister of Defense and proposed by the Chief of the General Staff.

16. Article 26 of Act 29/2006 (subsequently incorporated into Legislative Decree 66/2010) amended the above provision, by cancelling the above quotas for all roles, bodies, groups, and specializations. The quota system was intended as a transitional measure to solve immediate logistical problems, since facilities had been designed for male use only. It was followed by the full and seamless integration of women into the system. Act No. 380/1999 also provided for the establishment of an Advisory Committee (“Advisory Committee for the inclusion of female volunteer personnel in the Armed Forces and the Corps of the Revenue Guard Corps”), to assist the Chief of the General Staff and the General Commander of the Guardia di Finanza (customs and excise police) in the planning, coordination and assessment to include and integrate women officers into the Armed Forces, Carabinieri Corps and Guardia di Finanza.

17. In June 2000, the Minister of Defense, in consultation with the Ministers of Finance and the Minister of Equal Opportunities, adopted a decree to establish this Committee. In addition to determining its terms, the Decree establishes the composition, subsequently reduced by Presidential Decree (DPR No. 88 of 14 May 2007) from an initial eleven to seven members. Presidential Decree (DPR No. 90 of 15 March 2010), containing the Unified Text of the military system regulations, amended the duties, duration and composition of the above Committee.

18. Approximately 3.5 percent of recruits are women, confirming the consolidation of a female presence in the military system, despite the fact that women have only recently been allowed to join the armed forces (approximately 10 years ago). Since the early days of recruiting female military personnel, the personnel policies of the armed forces have paid specific attention to the basic principles of gender equality, equal opportunities and equal treatment. In 2002 the Chief of the General Staff issued military ethics guidelines, a professional ethics and conduct code aimed at preventing critical behaviour in interpersonal

relations. The Guidelines stress that implementation of these principles ensures the proper performance of institutional duties”.

19. Relevant NAP Footnotes are as follows: The same general terms of recruitment, legal status and career advancement are applied to women as to men, in compliance with the equal opportunities principle. Female staff have access to the various ranks, qualifications and specializations on an equal basis with men without exception. The rights of female staff are protected by Decree 198/2006 (“Code of equal opportunities between men and women”), which prohibits discrimination between women and men in the military careers by introducing additional protections for female staff during their training period. Parenthood is protected by the Armed Forces’ full implementation of Legislative Decree No. 151/2001, except for measures incompatible with the unique nature of the Armed Forces, which are provided for by Legislative Decree No. 165/2001. Pregnancy and both maternity and paternity leave therefore receive comprehensive protection. Presidential Decree 171/2007 (the most recent significant measure concerning Armed Forces personnel) introduced, through Article 14, a series of regulations to improve the above-mentioned protection measures for parents working in the Armed Forces. These statistics are reported by the Ministry of Defence, as of 1 July 2010.

Italian female military personnel (excluding 144 military chaplains):

| <i>Armed Forces</i> | <i>Officers</i> | <i>NCOs</i> | <i>Troop</i> | <i>Total</i> | <i>Headcount Total Force</i> | <i>% Women compared to stock Forces</i> |
|---------------------|--------------------|--------------------|----------------------|-----------------------|----------------------------------|---|
| Army | 236 | 69 | 6 637 | 6 942 | 106 785 | 6,50% |
| Navy | 227 (CEMM)/86 (CP) | 116 (CEMM)/29 (CP) | 733 (CEMM) /542 (CP) | 1076 (CEMM) /657 (CP) | 43 910 (32986 CEMM and 10924 CP) | 3,95% |
| Air Force | 154 | 74 | 581 | 809 | 43 148 | 1,87% |
| Carabinieri | 192 | 398 | 727 | 1 317 | 108 642 | 1,21% |
| Total | | | | 10 551 | 303 440 | 3,48% |

20. PARA.13: According to ISTAT, being the National Institute on Statistics, it should be considered that in 2011, the youth unemployment rate reached on average 29,1%, though this rate raised to 44,6% among young women residing in the South of Italy (ISTAT, Work-Force Survey, Media 2011). Only 60.6% of mothers of the gender age group 25-54 are active in the labor market and those employed are 55.5%, while fathers employed reach 90.6% (Reconciliation between work and family, ISTAT 2010).

21. PARA.14: With a prevalence rate ranging from 69.7% to 78%,(FOOTNOTE 23)¹ domestic violence is the most pervasive form of violence that continues to affect women across the country. The prevalence of domestic violence (physical or sexual violence by the partner), according to the ISTAT survey, amounts to 14,3%. A national survey conducted in 2006 estimated that 31.9% of women between the age of 16 and 70 face physical or sexual

¹ Footnote 23: Women’s Network Against Violence, DIRE, *Note for 13th WAVE conference, October 2011*, p.1 According to a survey by DIRE, the rate of violence against women is 78% . It seems to the Italian Authorities that this datum refers to the rate of women victims of domestic violence among those who seek help and apply to the Anti-violence Centres DIRE and therefore does not refer to the prevalence of domestic violence against women. 69,7% is not an ISTAT datum. According to the relevant ISTAT data, the rate is of 14,3% , of which approx. 69,7% of rape cases are perpetrated by the partner. Perhaps the interpretation of data has caused some misunderstanding.

violence during their lifetime and that 14.3% of them faced at least one episode of physical or sexual violence by their current or former partner. (FOOTNOTE 24 below)².

22. PARA.15: Furthermore, acts of domestic violence are for the most part serious; with 34.5% of women reporting being victims of serious violent incidents; 29.7% of them declared it was sufficiently serious; while 21.3% of victims felt in danger when the violence was perpetrated. Yet only 18.2% of them considered domestic violence as a crime and 36% accepted it as a common occurrence. Similarly, only 26.5% of women consider rape or attempted rape as a crime (FOOTNOTE 25 below).

23. PARA.16: Domestic violence in the private sphere remains largely invisible and under-reported.(FOOTNOTE 26 below) Although statistics from the Rome Prosecutor's Office indicate a slight increase of reports on sexual offenses and domestic violence in 2010 (FOOTNOTE 27 below), 96% of women who are victims of violent acts by non-partners and 92,4% of victims of partner abuse - do not report cases to the police. Similarly, most cases of rape (91.6%) are not reported to the police. Moreover, 34,0% of women who have suffered violence at the hands of a partner, and 24% by a non-partner, have never talked about what happened to them. (FOOTNOTE 28).³

24. PARAS.17-18: It is not reported the source of the information, nor are there references allowing to provide detailed information on the reported case. However the statement in the paragraph: "Many domestic violence cases brought before the judges expire", cannot be corroborated by the example cited in the same paragraph, since murder is a crime under no statute of limitation (imprescrittibile).

25. In the case therein reported, the release of the accused may have been determined by the end of the pre-trial custody term. This constitutes a form of guarantee of a defendant not yet convicted by final judgment. Please also consider that Italy applies the principle of the double degree of adjudication. Only in case of confirmation of that sentence by final verdict, the defendant will be brought back to jail for serving it.

26. The shared custody is also viewed favorably by the Convention on the Rights of the Child (children have the right to maintain a balanced and continuous contact with both parents) and is an institute, which aims to ensure that both parents can equally take decision on the education of their children's. Act No. 54/2006 (similar laws apply in other States, like France,) was hailed at the time of its enactment as a law of civilization. Implementation problems can arise, of course, due in most cases to high conflict between former spouses.

27. Plus avoiding tout court the joint custody in cases of alleged violence against the other parent does not respond to the non-discrimination principle that also has to be applied in judicial proceedings as an evaluation criterion. In the first place because it might pave the way to a false complaint of the mother to take away a right to her son and former husband – the cases of false accusation in the separations are many, since there is a great climate of hatred between former spouses. Secondly because the institution of shared custody entails the intervention of mediators, psychologists, who can report these problems to the court that can decide on revoking the joint custody. On a more general note, the relevant system designed by law is as follows: Art. 155, 155-bis, 155-ter, 155-quarter, 155-quinquies, 155-sexies of the Civil Code, as amended by Act No. 54/2006: By default it is decided the shared custody. However, the court may order the release of the custody measure for only one of the parents if joint custody is contrary to the best interest of the

² Footnote 24: ISTAT, *Violence against women*, 2006, p. 2 Note that the survey was conducted on women living in Italy however, the foreign component was unrepresentative.

³ The source is not correct. All these data have been provided for by ISTAT as was the case with footnote 24.

child. Among cases of withdrawal of joint custody, of course it is also relevant the case of domestic violence.

PARA.19: Please refer to information provided below under para..

28. PARAS. 21, 23, 44-45, 73-74: The newly established Government – that began its mandate, on November 17, 2011 – decided to immediately tackle this complex issue, by means of an inter-ministerial approach. With the aim of providing the European Union with those answers, which are still missing to date, Italy has elaborated a Strategy, which will guide, in the coming years, the effective inclusion process of Roma, Sinti and Caminanti communities (acronym in Italian, RSC). The aim is to definitively overcome the emergency phase, which has characterized the past years, especially when intervening in and working on the relevant situation in large urban areas. In this context, it should be considered, in particular, that the main axes of intervention involve, to a different extent, many Authorities with a variety of roles, tasks and competencies: All of them must participate in this structured exercise, in a coordinated manner, in order to pursue the aim and to achieve the objectives, as set out by the Government, within the EU relevant framework.

29. The Minister for International Cooperation and Integration has been thus entrusted to establishing a political control room (*Cabina di regia/tavolo politico inter-ministeriale*) for the relevant policies of the coming years, jointly with the Minister of Labor and Social Affairs, the Minister of Interior, the Minister on Health, the Minister on Education, University and Research, and the Minister of Justice, in which he has also convoked and involved representatives of regional and local Authorities, including mayors of large urban areas, as well as representatives of the Roma, Sinti and Caminanti communities living in Italy. In this context, it has been immediately launched a thorough examination of methods, priorities and resources to be allocated. Considering the relevant international and regional human rights law background, within which Italian Authorities have recalled all relevant measures, the above control room is thus guiding the integration/inclusion process. This control room is working by availing itself of UNAR that has been designated as the relevant National Focal Point (NFP). This is taking into consideration past experiences while concluding a certain number of initiatives already underway, particularly in the following fields: “housing”; cultural mediation services; school dropping-out. More specifically its activity will be supplemented in the near future by additional initiatives, including in the other relevant fields, as also progressively implemented by the above control room.

30. Under the uniform political guidance of the above control room, this Strategy envisages, as follows: 1. The establishment of four technical Tables aimed at working on specific problems, namely housing, education, labor and health; 2. The establishment of some working groups, in charge of constantly updating data (which are essential to adequately steer the policy choices), and of working, inter alia, on the heterogeneous legal status of those undocumented Roma people who arrived in Italy in particular, in the aftermath of the Balkan conflict; 3. The constant monitoring of the EU and National funding, including monitoring the correct use and the consistency of resources, in order to achieve the above objectives.

31. As for the so-called administrative state of emergency, which has nothing to do with the UN State of Emergency (ICCPR), with the aim of restoring good living conditions, it was generally acknowledged, in particular, that the situation in the unauthorized camps could not guarantee them at all:

32. In 2008, the then Minister of Interior prompted action-oriented measures, by appointing the Prefects of Rome, Milan and Naples as ad hoc Commissioners, being tasked to solve the so-called Emergency relating to the settlements in their respective Regions.

33. In May 2009 such initiative was extended to two more Regions. Under this state of emergency (see the Prime Minister Decree of 30 May 2008) - which has no relation at all

with the public state of emergency to be communicated to the United Nations, but stems from the national legislation on civil protection - "Civil Protection Orders" were released by the Minister of Interior, to speed up the administrative procedures, including agreements to build new ad hoc areas. These "Orders" also included integration measures aimed at facilitating the school enrolment, the access to health-care services and the labour market. To do so, the Government deemed it necessary to collect detailed information about the number of the people living in the settlements. A census was launched in collaboration with the Italian Red Cross, to identify all the individuals present in the camps, being not only Roma and Sinti people. In accordance with national and international legislation concerning the protection of privacy, no data-base was created nor reference to religion or ethnic origin was taken.

34. More recently, the Council of State (and not the Council of Ministers as reported in your report) intervened with regard to the so-called Roma Emergency, by verdict No. 6050 of 16 November 2011. This declared void the Decree of the Presidency of the Council of Ministers dated May 21, 2008 concerning the state of emergency in relation to the settlements of "nomad communities" in the regions of Campania, Lombardy and Latium respectively, by which it was also envisaged the appointment of delegates-Commissioners. Consequently it also declared void those acts made in exercising the so-called civil protection emergency powers.

35. On that basis, the Italian Authorities have recognized the need to adopt new initiatives, in agreement with local Authorities. The implementation of policies of social inclusion of Roma communities falls and remains within the responsibilities of local Authorities. Therefore, municipalities, provinces and regions will continue to pursuing their commitment and duties, with the support of the Prefects, locally as well as of the Ministry of Interior.

36. As for the National Office Against Racial Discrimination (UNAR), this was designated last November as the national focal point for the elaboration and launching of the first National Strategy for the Inclusion of Roma, Sinti and Caminanti communities, within the relevant EU framework. On February 24, 2012, the Italian Government adopted the above Strategy, with the two-fold aim of providing the European Union with those answers, which are still missing to date, and of ensuring, in the coming years, the effective inclusion process of Roma, Sinti and Caminanti communities (acronym in Italian, RSC).

37. Once again it is worth reiterating that, on the assumption that the concept of nomadism does not reflect anymore the situation of the communities under reference, the aim is to definitively overcome the emergency phase, which has characterized the past years, especially when intervening in and working on the relevant situation in large urban areas.

38. Last, it should be considered that the above declaration of the administrative state of emergency was adopted in line with the civil protection legislation, by which it is envisaged the more easily allocation of human and financial resources.

39. PARAS.22-23: "According to a survey, 26% of Romani women have reportedly suffered abuses by police including physical violence, degrading treatment, racist remarks and sexual harassment".

In this respect as stated by the representative of the Department of Public Security during the intervention to the 49th session of the CEDAW Committee (14th July 2011), all crimes against Roma women are managed with great care by Police, but the lack of the denounces in cases of sexual violence is typical, especially in Roma communities.

40. With specific regard to measures for the Roma Inclusions, aimed at ensuring human rights education and information, as well as the promotion of the access to accommodation,

labour and education, please refer to the National Strategy on Roma Inclusion, to be retrieved in English from the following website: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm

41. PARA.24: In this respect, first please consider the projects indicated in the National Strategy on the Social Inclusion of Roma, Sinti and Travellers communities, which also enlist, historically, all relevant initiatives undertaken by the Italian Authorities: (p. 47 et ff. and Annex No. 2 therein): "Axis 1. Education: "Increasing the amount and quality of educational opportunities and the number of RSC students enrolled in schools of all types and levels, by encouraging their attendance and academic success and full education", according to the following specific objectives: Specific objective 1.1: "Promoting processes of pre-schooling and schooling of Roma and Sinti children, promoting non-discriminatory access (enrolment, attendance, results) to all levels of schools and combating school drop-out of RSC children in primary and secondary schools"; Specific objective 1.2: "Increasing the participation of the RSC youngsters in university education, in advanced training courses and vocational training, including access to the so-called "honour loans", scholarships and other opportunities and benefits, provided for by law "; Specific objective 1.3: "Promoting dialogue and cooperation between educational institutions, neighbourhood, families and RSC communities ".

42. Second, in the planning for the term 2007-2013, the Ministry of Education through the PON Education "Skills Development" (reserved for the regions of Calabria, Campania, Puglia, Sicily) collaborates with the National Network for Social Inclusion of Roma, which is part of the European Roma ('EURoma network') being currently composed of representatives of 12 Member States, and assist in this process with the aim of promoting the use of European Structural Funds targeting the Roma people besides promoting their social inclusion. The thematic frames in which they fit the actions targeting the Roma within the National Operational Program "Skills Development" is the theme of minorities and combating segregation, the explicit approach towards disadvantaged groups but not exclusively, the collection reliable data to promote appropriate approaches and strategies consistent with the data collection. The experience derived from monitoring the activities funded by Pon Education can confirm that a targeted and specific projects, involving the Roma people can develop the values of culture and active participation, to facilitate self-determination and achieve the highest level of personal and family autonomy as possible. The participation of Roma students by gender in training was balanced in the different annuities, about 50% of males and 50% of females. The Roma students who attended courses PON have chosen both paths: action C1 (Key Skills); and the objective F (contrast the early drop-out). It is interesting to note the presence of Roma students into the path of C4 on "the promotion of excellence (No. 4 in 2008)".

43. Third, please also consider the historic relevant regulatory background, as follows: "Communication of the Ministry of Education No. 24, of March 1, 2006, entitled "Guidelines for the reception and integration of foreign students (in the field of Education, it also recalls the document in October 2007, the general direction, entitled:" The way Italian school for intercultural and integration of foreign students "by the National Observatory for the integration of foreign students and intercultural education, within which are set out principles and actions that define" national model "for the reception and integration of children of different cultural origins, including Roma and Sinti groups. In this framework, mention has to be made of the Third Plan of Action and Action for the Protection of the Rights and Development of Children in childhood, prepared by the National Childhood and Adolescence, approved by Decree of the President of the Republic and published in the Official Gazette No. 106 of May 9, 2011, with which they identify some priorities, besides presenting guidelines for action on which they have developed proposals for coordinated action. One of the four lines of action of the Plan is to promote integration of immigrants, in which were included foreign interventions concerning Roma

children; Communication of the Ministry of Education No. 207, 1986, "Schooling of Gypsy and Caminanti pupils in kindergarten, elementary and secondary levels (although one should anticipate that, since 1965, the Ministry of Education dealt with Roma children's access to education, adopting an agreement with the 'Opera Nomads, for the establishment of special classes "Lacio Drom" ("Good Journey"). This methodological choice was motivated by the fact that at the time this was the first school approach to a population that never before had approached it and was used to be settled for long time in a specific area. The aim was to allow an adaptation between the schooling times and the nomadic life. In 1982 the Ministry of Education signed a specific MoU, to ensure the frequency of compulsory education to Roma children in regular classes.

44. PARA.25: "*The Special Rapporteur was informed of a case where a migrant woman in an irregular situation (...) against the perpetrator*". In this respect there is no reference to the source, so that Italian Authorities are not in a position verify it and thus adequately assess it.

45. PARA.26: "*The mandatory legal residency period of 2 years, compels them to live with their abusers, in order to acquire citizenship*". This statement is not correct. In case of judicial separation or divorce, the woman who has a job can ask the Police Authority to change the residence permit from "familiar reasons" in "subordinate employment". Citizenship can be acquired with this kind of residence permit as well.

46. PARA.27: "*Yet, an interview with a victim of trafficking (...) from programs of assistance to trafficked persons*". Without a regular request by the person concerned, the procedure to acquire the residence permit for "social protection" ex Art. 18 of the Immigration Law cannot be initiated. On a more general note, it is worthy of mention that trafficked persons are entitled to the stay permit, on the spot, meaning that it is sufficient to declare to be victims of trafficking and thus regardless of any denounce against the traffickers.

47. The relevant projects promoted and co-funded by the Department of Equal Opportunities provide as well specific tools and procedures to come into contact with victims and potential victims of trafficking, in order to allow them to be identified as such and referred to the proper assistance facilities. Namely such procedures include the use of cultural mediators and peer operators (social workers of the same nationality/ethnicity of the potential victims, who have also experienced trafficking and/or exploitation). The purpose is to make the victims feeling confident and so as to help them to disclose their condition of exploitation.

48. This is in fact a precondition in order for them to have access to the national protection program. Furthermore, they have to provide basic information to the police officers, so that they can assess their condition and verify the request of protection made by the social workers on their behalf. To his end, some specialized police units, during the interview with the potential victims make use of cultural mediator psychologists, and even woodo priests (in the case of Nigerian potential victims). It may happen that despite such provisions, some victims refuse to provide any kind of information at all, thus preventing themselves from being helped within the assistance programs. Consequently, in such cases they may be deported insofar as illegal migrants.

49. PARA.28: According to results of a study conducted on data from the Labour Force in 2006, the rate of foreign women who have the chance to work in segments characterized by lower workers skills is about eight times higher than that of Italian women, while the foreign men likelihood is "only" double if compared to Italians men ("Foreigners in the labor market", ISTAT, 2009).

50. PARA.29, FOOTNOTE 50: Please refer to para.111. However please note that the free compulsory education has been recently raised to age of 16 for all students, both

Italians and foreigners. As for the rationale behind the quota system, please refer to para.111.

51. PARAS.30-32: The number of women in Italian prisons represents a small percentage, when compared to the whole of the prison population, since it is about 4% of the total number of prisoners; the crimes which women are sentenced for or charged with are generally characterised by a low level of danger for the community.

52. Indeed, the number of female prisoners present as of 23rd April 2012 was of 2,819 units, while male prisoners were 63,334. The number of imprisoned women has never overcome the threshold of the regular capacity, so that, unlike what happens for male wings, there are not any particular problems of overcrowding in female structures.

53. As for the women's distribution throughout our country, their highest presence can be found in the prisons of Lombardia (571), Lazio (455) and Campania (337).

Twenty-four prisons accommodate mothers with their children. Two prisons are exclusively dedicated to women: Rome and Venice; all the other structures are female wings. As of 23rd April 2012 there were 59 women imprisoned with their children.

54. In line with the European choices of penitentiary policy, the Italian Penitentiary Administration has been putting particular care, during the last years, to female prisoners, with a two-folded purpose: on the one hand, to improve the quality of the detention regime, with a new care of the gender differences; on the other hand, to take care in particular of the issue of parenthood, as well as of the presence of children who live in prison with their mothers.

55. Our Administration has therefore been committed on two fronts: the drafting of a specific normative instrument and the research of a model of rehabilitation treatment which keeps into account the gender differences.

56. A model of internal regulations for female prisons and wings was drafted for the first time in 2008, during the carrying out of an Executive Plan of Action named "Female detention", which provided for a survey of the situation of female prisons and wings as well as for an identification of the relevant needs.

57. That model of internal regulations highlighted the women's affective dimension, their specific healthcare needs, the relation with their femininity, the need to offer equal opportunities of social reinstatement; those regulations also provide for the possibility, for female prisoners, to co-participate in the rehabilitation activities carried out in the men's detention structures.

58. That point is very important, in particular for the female wings situated in men's structures, since in those prisons there is the concrete risk, due to the small number of women present when compared with the male prison population accommodated in the same structure, to organise much fewer treatment and rehabilitation activities for women than for men.

59. Thus, the number of activities providing for the presence of both men and women has been increased, and namely of those activities which are strongly aimed at rehabilitation such as education and vocational training, cultural, recreational and sporting activities, participation in the prisoners' representations, as provided for by the Italian Penitentiary Act. This was made in compliance with the Rule 18.9 of the Council of Europe European Prison Rules.

60. As far as employment is concerned, as of 31st December 2011 the percentage of male working prisoners was of 20.48% (out of a total male prison population of 64,089), while the percentage of female working prisoners was of 29.55% (out of a total female prison population of 2,808).

61. Coming to the specific situation of the Female Prison of **Pozzuoli** – mentioned in the Special Rapporteur’s Report – it is worth specifying that in this structure the prisoners’ admission to working opportunities is made – due to the lack of a sufficient number of workplaces employed by the Penitentiary Administration – on a shift basis and on a temporary basis, as it occurs in almost all the prisons in our country – in compliance with a list established as per the criteria for the assignment of scores in terms of article 20 of the Penitentiary Act.

62. As far as education is concerned, with reference to the school year 2010-2011, the number of women attending school courses and education activities is – in proportion – higher than the number of men:

| | | |
|------------------------------|--------------------|--------------------|
| • Literacy skills foreigners | men enrolled 2,420 | women enrolled 239 |
| • Primary school | men enrolled 3,467 | women enrolled 333 |
| • Secondary school | men enrolled 4,790 | women enrolled 275 |
| • High school | men enrolled 3,991 | women enrolled 187 |
| • University courses | men enrolled 354 | women enrolled 15 |

63. As a support for a more targeted rehabilitation treatment, some interventions were carried out, with the main purpose of widening the possibilities of employment and of vocational training, through the drafting and the signature of a Protocol of Agreement between the Penitentiary Administration and those social cooperatives working in the field of clothing/fashion tailoring and handicraft in some female prisons and wings, carrying out innovative experiences.

64. That Protocol was followed by the establishment of the trade mark “*Sigillo*” (Seal), registered by the Department of Penitentiary Administration in October 2009.

65. The said protocol of agreement was undersigned by the following social cooperatives: *Codice a sbarre* (Vercelli), *Alice* (Milan), *Diversamente Utili, Made in carcere* (Lecce) and *Papili* (Turin), with the purpose of developing joint actions for increasing the already existing work opportunities for female prisoners.

66. A particular attention was paid to the delicate issue of imprisoned mothers with their babies: the prisons where a female wing existed were given instructions to establish a crèche, even for a few bed places, for mothers with their babies with them – also for in transit prisoners – in order to reduce as much as possible the discomforts for children connected with their life in a closed institution.

67. To that purpose, the precious work is to be underlined of penitentiary workers, who educate, inform and support the mothers, as well as the precious ongoing cooperation with the local communities and the volunteers’ associations who carried out meaningful projects aimed at the protection of motherhood and childhood in prisons.

68. In the prisons, a medical service of specialists such as gynaecologists and paediatricians is provided, along with other services, such as crèches for children, playing grounds and spaces dedicated to children.

69. Staff specialised in child-welfare works in most of the prisons accommodating mothers with their babies; that staff daily works with children in the crèche, accompanying them outside in the local nursery schools, in order to allow them to participate in activities of socialisation with other children who do not live the experience of prison and to offer them the possibility of an interaction with the group of “peers”, as it is necessary for meeting their needs of development and growth. Those experiences are very important since they help ensuring good learning conditions and they provide stimulus which they are usually deprived of when they are in prisons.

70. The Local Healthcare Agencies and the Municipalities, on the basis of agreements with the Ministry of Justice, are committed to guaranteeing the access to local nursery schools also beyond the limits of age (at the Venice Giudecca prisons a service is ongoing for accompanying children to the seaside in summer).
71. In all the female prisons and female wings, the presence of educational and healthcare services for early childhood – made available by the Local Bodies – allows to carry out reinstatement and rehabilitation initiatives consisting of projects for education, training, job guidance and language and cultural mediation.
72. The latter point seems of great relevance, given the high number of foreign female prisoners, which, as of 31st March 2012 (last datum available) amounts to 1,168 units.
73. For foreign female prisoners, as in general for all foreign prisoners, services of language and culture mediation are established in many prisons. The current economic situation, which led to the cut of funds both to central Administration and to Local Bodies could lead to a reduction of those services, which appear to be crucial in the management of foreign prison population.
74. In 2007, a plan of action named “Parenthood” was set, right in order to analyse in depth the organizational choices and the operational practices through which the Administration can affect the relations between the prisoner and his/her family, in particular with children, by identifying facilitated paths – also from an architectural point of view – for children who meet their imprisoned parent on the occasion of family visits, by signalling that “path” with elements recalling the characteristics of a game as for their forms and colours.
75. An important innovation in matter of female detention was introduced by the law of 21st April 2011, nr. 62, which provides for, dating from 1st January 2014, that mothers with children up to six years of age both sentenced and on remand or pre-trial detention, should be accommodated in low-security establishments for mothers (ICAMs), built on the model of the ICAM in Milan, which is still the first and only structure of that kind and which was established in 2007 with the cooperation of the Provincial Administration and in synergy with other Ministries and Local Bodies.
76. It is an experience built on a completely different model of deprivation of liberty for female prisoners and their children: indeed, by recreating the life conditions of a free environment, that model allows to avoid most of the negative effects of detention on children.
77. Indeed, though maintaining the judicial status of penal establishments, the ICAMs are deeply different from the “traditional” prisons, since those structures are not equipped with security devices visible to children (for instance, bars on the windows or surrounding walls) and the staff wears plain clothes.
78. In those establishments, the rehabilitation treatment is not inspired to a detention lifestyle, but rather to a community lifestyle, in order to allow children to grow up in an environment as similar as possible to a family house. Those structural characteristics meaningfully improve life conditions of imprisoned mothers and of their children and, at the same time, they possibly facilitate the contact of the prisoner with her other children living outside the prison.
79. The Milan ICAM, which reproduces the plan of a one-storey flat, can accommodate ten mothers with their children and offers various services, in cooperation with the local counselling services for children and for families.
80. The Italian Penitentiary Administration intends to repeat such a successful experience in other parts of the Country, in order to have an amount of places available

sufficient to accommodate the highest possible number of mothers and also – after the coming into force of the recent law nr. 62 of 21st April 2011 – of fathers having children up to six years of age; other projects are therefore under planning for the building of new low-security establishments in the Regional Directorates of Tuscany, Triveneto, Piemonte and Lazio.

81. The said Law nr. 62 of 2011 also provides for the establishment of the so-called “protected half-way houses” [*case famiglia protette*] – not falling within the competence of the Penitentiary Administration – for the accommodation of pregnant women and mothers under house arrest or under home detention: those structures will facilitate the access to alternative measures for women who meet the requirements provided for by the law, but who do not have a regular housing situation, thus lessening the restrictions existing for foreign women, Roma women or women belonging to nomad communities.

82. Although some negative factors still affect the possibility of accessing alternative measures for women, the statistic data are not negative. Indeed, as of 31st December 2011, women could benefit from measures alternative to detention as follows:

- 1,506 women assigned to the probation service;
- 62 women under semi-liberty,
- 1,882 women under home detention.

83. Since the entry into force of the recent law nr. 199 of 2010 and until the 31st march 2012, 140 imprisoned women could be released from prisons in order to serve their sentence at their own domicile.

84. This Administration is perfectly aware of the delicate issue concerning the passive smoke in the cells and, therefore, of the protection of non-smoker women’s health. However, that issue cannot have a quick solution.

85. Indeed, despite article 51 of the law nr. 3 of 2003 provided for the general prohibition of smoking, apart from the exceptions specifically provided, the relevant regulation – provided for by paragraph 4 of said article 51 – has not been adopted yet. That normative provisions should provide for specific rules for “all the structures where persons are obliged to reside not on a voluntary basis”. Therefore, one complete and unmistakable normative solution does not exist yet.

86. Anyway, on the basis of the provisions currently in force, it is possible to draw some general conclusions on that point. In particular, it is necessary to consider that, given the peculiar aspects of the penitentiary structures, it is not possible to interpret nor to enforce in a rigorous way the no-smoking provision in the detention structures. And, in fact, in terms of the above-mentioned article 51, paragraph 4, of the law nr. 3 of 2003, the regulations to be issued should provide for the establishment of specific “smoking premises” in those structures where persons can be obliged to stay; moreover, article 6, paragraph 7 of the DPR 230 of 2000 – the Regulations of Enforcement of the Italian Penitentiary Act – provides that “Where conditions permit, units for non-smokers are provided”.

87. Once established what above, it is evident that our Administration should protect the right to health of non-smoker prisoners by trying, as much as possible, to ensure separation between smokers and non-smokers. To that purpose, some directions has been given in the past years to the prison governors, in order to put particular care in separating smoker prisoners from non smoker prisoners, upon their assignment to cells. In order to enforce

said directions, different forms of internal regulations were adopted, keeping into account the peculiar characteristics of each structure⁴.

88. In particular, with reference to items 31 and 32 of the UN Special Rapporteur's Report⁵, the Governor of the remand prison in Pozzuoli communicated what follows.

89. The remand prison in Pozzuoli has cells both for smoker prisoners and for non-smoker prisoners. Therefore, the assignment of the person to one type of cell or to the other type of cell depends on what she states, upon her entry into the prison, about her status of smoker or non-smoker: that statement is made both to the penitentiary police staff – who asks expressly the prisoner whether she smokes or not – and to the medical staff upon the subject's first-entry medical examination; it is then recorded in the prisoner's personal medical file. In particular, as for the case mentioned in the Report of a woman in the eighth month of her pregnancy placed in a cigarette-smoke filled cell, it is to be said that that woman was a smoker, who used to regularly buy tobaccos, as it results from her current account, kept by the prison Direction.

90. As for the lack of hot water in the communal bathroom, it is to be specified that, at the moment of the UN Special Rapporteur's visit, there was a concomitant break in one of the prison's tanks for the storage of water; therefore, the amount of hot water in the only available tank was not sufficient, due also to overcrowding, to provide hot water throughout the day for all the wings at the same time. The broken tank was anyway replaced.

91. As for the employment opportunities offered to prisoners, as it was mentioned by the Special Rapporteur, it must be said that the Pozzuoli prison governor loaned free of charge some premises, equipment and machines to the limited social cooperative "Lazzarelle", which employs some prisoners, according to its needs, as coffee-roasting workers. The latter are employed with a regular temporary work contract and are protected in terms of the National Collective Work Agreements and according to the company practice. Moreover, thanks to the synergy established with the local community, some prisoners have been recruited, further to cooking training courses attended in prison, by some local restaurants, upon their release or while serving their sentence under an alternative measure. Furthermore, the Pozzuoli prison entered into an agreement with the local Caritas, which offers the prisoners the opportunity to be periodically recruited, on a temporary basis, by some families or by the bishop's see, for the fulfilment of various tasks. In any case, 29 prisoners are working in the Pozzuoli remand prison (5 of which work outside the prison, in terms of article 21 of the Italian Penitentiary Act), which represent 17% of the prison

⁴ In some cases, just to give some examples, it is allowed to smoke only in the cells and in the open areas, excluding corridors, medical departments, rooms for recreational activities and common spaces in general. In other cases, it is allowed to smoke in the cells subject to an agreement among the prisoners who live in the same room. In other cases, it is allowed to smoke mainly in the exercise courts or, when the latter are closed, only in ventilated rooms.

⁵ "31. Overcrowding and unhealthy conditions is a problem identified during the Special Rapporteur's visits to detention centers. For example, in the Women's Detention Center in Pozzuoli, 12 women, including an 8 month pregnant woman and an elderly woman in her 60s, were confined in a cigarette-smoke filled cell, with no hot water in the communal bathroom."

"32. In all detention facilities the Special Rapporteur visited, overcrowding and resource constraints, contributed to increasing challenges relating to access to employment opportunities within the prison. For instance, in one facility, of 198 detainees, only 5 were provided with the opportunity for permanent full time work, with an association located inside the prison, for the duration of their stay in prison. Interviews with female inmates also highlighted the discriminatory practices by prison staff in terms of opportunities, unclear eligibility criteria for work, or preferential criteria, where condemned prisoners with long terms sentences are given priority over those with shorter sentences or those awaiting condemnation".

population, despite since 2009 the number of work hours available for each prisoner had to be reduced because of financial restrictions.

92. As for the prisoners' access to work, the Governor clarifies that the procedure provided for by the normative currently in force is strictly respected, carefully applying the classification drafted by the Commission provided for by article 20 of the Penitentiary Act. Finally, as for the Judicial Psychiatric Hospital of Castiglione delle Stiviere, it must be underlined that this structure does not fall within the competence of the Penitentiary Administration, but it comes under the authority of the Lombardia Region; therefore, the staffing of that structure falls within the competence of that regional Administration. The latter committed itself to finding more spaces in order to improve the situation of said establishment. As for the internees who are in the Castiglione structure, it should be said that most of them come from the Region concerned. The few women present coming from Southern Italy will be transferred as soon as the female wing of the Judicial Psychiatric Hospital of Barcellona Pozzo di Gotto (in Sicily) will be ready, which is expected in a short time.

93. As for item 12 of the Report (*Women and Employment*), as of 31st December 2011, the executive staff of the Penitentiary Administration was composed of 434 units: 268 women and 166 men.

94. As for the Corps of the Penitentiary Police, as of 1st January 2012, there were 402 Deputy Chief Constables and Chief Constables: 153 women and 249 men.

95. PARA.33: At the juvenile criminal Institutes, Regional Education Offices provide, on a priority basis, courses of study in relation to the educational level of users, or more generally courses of primary and secondary education, in accordance with the Italian Constitution. They also provide further level of education. In the academic year 2010/2011, secondary education was provided in Airola Catanzaro, Milan, Palermo and Treviso. Both minors and young adults confined in a juvenile penitentiary Institute always enjoy access to education at least as private students, meaning that they can always take exams as from private. As also considered by the UNWG on Arbitrary Detention following its mission to Italy (November 2008), the juvenile justice system is based on the process of children's empowerment. Therefore all educational and training courses are provided regardless of the gender identity of children and young adults who freely choose their courses according to their abilities and their will.

96. PARA.34: Article 275, para.4, penal proc.code, provides that the pre-trial detention measure cannot be ordered - unless in accordance with precautionary needs of exceptional importance -, when defendants are pregnant women or are the mother of children under the age of 3 living with them (the age has been raised to the age of six), or the father if the mother has died or is totally unable to take care of the children. The rationale behind the provision is the need to guarantee family assistance for the children (Sec. 2, No.795, of 14/02/1996, RV. 204 766- Sec. 4, No. 42 679, of 29/04/2003, RV 227 292) (Sec.5, No. 38067 of 05/04/2006, RV 235, 757). In terms of exceptional precautionary needs, it should be considered the case of crimes whose detention penalty is not lower than four years, there is the risk of repetition of the crime and it relates to organized crime (Sec.5, No. 599, of 04/02/1999, Rv. 213344 and Sec. 2, No.32472, of 08/06/2010, Rv. 248352). Even in the event of the need to apply the most severe coercive measure, in accordance with Act No. 62/2011, the justice may provide for the custody in an attenuated-custody Institution for mothers detained. This measure applies from not earlier than January 1, 2014, save the possibility of using those places already available in accordance with the existing legislation. To the same date, it has been decided the rise of the age of the child from three to six. (Sec..II 11714 of 16/03/2012). At present there are no relevant Bills.

97. PARA.35: On a preliminary note, in accordance with the Italian Constitution, Italian Authorities provide for free legal aid. Indeed it is envisaged the free legal counsel's choice meaning that the person concerned chooses the legal counsel of his/her own choice even in the event of free legal aid, which first applies to the poor people and then also to those being victims of specific crimes, such as those envisaged under Art.609 bis et ff. Of course, this possibility also applies to any victims, including foreigners. The free legal aid applies upon request of the victim. The reference to "a power" of the judicial authority rather than a "duty" merely indicates the need of procedurally verifying the existence of a proceeding already being initiated and registered with regard to one of the above-mentioned crimes. Since the State guarantees the same right of free legal aid and free choice of the legal counsel either to the poor and to those subjects being victims of specific offences, it is not very clear while there is dissatisfaction with an institute depending on the free choice of the person concerned.

98. With reference to what the UN report states about the presence of transsexual prisoners in male wings of prisons⁶, it is to be said that the management of that category of prisoners still represents a critical issue. With the purpose of ensuring a decent detention to transsexual prisoners, (who are 77, according the last survey of October 2011), the Italian Penitentiary Administration has given several instructions to prison governors so that they adopt solutions aimed at avoiding promiscuity situations, accommodating those subjects in female wings or, anyway, in separate wings; governors were also instructed to adopt such organizational measures as reducing the risk for the prisoners' safety. Specific wings for transsexual prisoners are established in the prisons of Naples Poggioreale, Rimini, Rome Rebibbia "Nuovo Complesso", Milan "San Vittore", Alba, Foggia, Agrigento, Florence Sollicciano and Belluno.

99. PARA.37-36, 49, 60, 63: As for Act No.68/99 concerning "Norms on the right to work of the persons with disabilities", it is worthy of mention, as follows: Act of 12 March 1999 No. 68, entitled, "Standards for the right to work of disabled people", with the aim of promoting inclusion and employment integration of disabled people into employment through support services and targeted employment, refers to:

- a) People, both men and women, of working age suffering from physical, mental or sensory and intellectual disabilities, with a reduced capacity to work more than 45 percent;
- b) Disabled persons, both men and women, of working with a degree of disability exceeding 33 percent;
- c) The disabled of war, civilian war invalid and void for service with disabilities, both men and women, ascribed to the eighth from the first category in the tables annexed to the consolidated text of the rules of war pensions, approved by Decree of the President of the Republic 23 December 1978, n. 915, as amended;
- d) Persons, both men and women, who are blind or deaf and dumb. These subjects, if unemployed working age (over 16 years and have not exceeded the limits permitted by the laws of working age), are part of lists kept by the provincial services for specific employment.

100. The services for the placement, at the provincial level, working to promote the integration and labour inclusion of the disabled people, both men and women. In this regard

⁶ Item 35 of the Special rapporteur's report: "Also the detention of transgender inmates in male sections of most prisons further exposes them to violence".

there is specific attention to existing social services, health, education and training courses for the persons with disability in that specific area.

101. At these offices there are "technical committees", the organs that evaluate the residual work capacity of a disabled person and define the tools necessary for employment and work in collaboration with local services for the purposes of the definition of an individualized plan for each person entered the lists of provincial employment.

102. The public and private employers are required to have their workers with disabilities employed in the following proportions: a) 1 disabled worker if they occupy 15 to 35 employees; b) 2 workers if they occupy 36 to 50 employees; c) 7% to be calculated on workers employed if they occupy more than 50 employees. For those employers of Article 18 provides an additional requirement of 1% to be reserved for widows and orphans because of work, war, service and Italian refugees repatriated.

103. Employers, both public and private, are duty-bound to hire disabled workers, both men and women, to make them starting-up a job from the relevant departments within the job services that report to the company the candidates selected. The private employers that does not hire workers with disabilities are subject to the payment of the amount as an administrative fine of 62 euros per day, rising to 77 euros per day for each disabled worker who has not been hired.

104. The public employers in default are subject to criminal, administrative and disciplinary penalties as provided for by the legislation on civil servants

The fifth report presented to Parliament by the Minister of Labour, on the period 2008-2009, shows that:

105. At 31 December 2009, the number of subscribers to the placement as disabled women appeared to be 341,972 units, of which 8,414 units started to work.
- At 31 December 2009 the number of foreign women with disabilities enrolled in the lists of targeted employment of 3,475 units was found to be women, of which 166 units started to work.

106. As above-mentioned, at present, there are no specific studies or surveys on the issue of violence against women with disabilities, conducted on a national scale. However, the Department for Equal Opportunities signed with ISTAT in April 2012 an agreement for the realization of a new survey on "Violence and abuses against women, including within the house-hold" (the previous one was completed in 2006), a specific section of which will be dedicated to violence on disabled women.

107. The above-mentioned Act of March 12, 1999, No. 68 "Regulations on employment rights of the people with disability" is the discipline that currently regulates the employment of persons with disabilities and represents a profound cultural innovation in the integration at the workplace. The law promotes and supports a "tailored" placement for people with disabilities on the basis of an analysis of the working capacity of the individual, the characteristics of the workplace, encouraging activation of positive support and thus providing for the removal of which could make it difficult to access the labour market.

108. All over the country people with disabilities registered to access this specific measure were 62.2 percent in 2005, with a maximum in the North-west (68.5 percent), followed by Centre (68.4 percent), North-east (60.4 percent) and, finally, from the South and Islands (59.2 percent). For people with disabilities who are unable to work, forms of public assistance (grants and allowances) are indeed provided.

109. Act of 27 December 2006, no 296, on "Measures for the formation of the annual budget and multi-state" (Finance Act 2007) established the "National Fund for the non-self-sufficient", aimed at ensuring, on the whole national territory, the implementation of the

basic level of benefits for disabled persons. This measure is intended to support the progressive implementation of a national health-and-social-care system specific for disabled, that ensures the full integration of policies and measures whose realization, before the Law's approval, relayed entirely on a regional basis.

110. On a more general note, as for women with disabilities, mention has to be made of the Decree of the Minister of Labour and Social Security of January 2000, No. 91, on Regulation for the operation of the National Fund for the right to work the persons with disability, as established by Act No. 68/1999, by which it is determined that the programs are aimed at encouraging the employment of women with disabilities.

111. Italy is a party to various agreements aimed at the protection of women against discrimination, such as ILO Convention No. 100, ILO Convention No. 111, ILO Convention No. 183, ICESCR, CEDAW, the last International Convention on the Rights of the Persons with Disabilities. Further it is worthy of mention the legislation implementing the EU directives on gender equality, as the Legislative Decree n. 216 of July 9, 2003 (which has implemented Directive 2000/78/EC on equal treatment in employment and working conditions) and the Legislative Decree n. 145, May 30, 2005 (implementing Directive 2002/73/EC on equal treatment between men and women as regards access to employment, vocational training and promotion and working conditions). Further mention has to be made of the relevance of Legislative Decree No. 216/2003, whose Article 1 envisages the possible exposure of women to multiple forms of discrimination if comparing their situation to men's. In implementation of the constitutional precepts of obligations under international treaties and EU directives, the national legislation on equal treatment between men and women has been developed with primary reference to 'working environment, as evidenced by Legislative Decree No. 198 of 11 April 2006 on the Code on equal opportunities between men and women, which provides for the adoption of "positive actions" particularly in access to jobs and careers in order to ensure very equality of opportunity between men and women.

112. At the level of constitutional principles there are various provisions in the field of non-discrimination and equal treatment for men and women that have been designed to protect women, women with disabilities, from different forms of discrimination as they may occur in the field of labor, access to public offices and elected positions and to protect maternity (see Arts. 3, 31, 37 and 51 of the Constitution).

113. More generally, it is also worthy of mention the following legislation: Act No. 104 of February 5, 1992, Framework Law for the assistance, social integration and rights of disabled persons, which contains the general rules on the inclusion of persons with disabilities and socioeconomic measures to promote integration into the labor and protection of the workplace - to this end are also provided exemptions from the bankruptcy proceedings (Articles 20-22); Act No. 68, March 12, 1999, Standards for the right to work for the disabled, the discipline into the world of work and employment integration of people with disabilities which provide specific support services and targeted employment besides establishing at the Ministry of Labour, Health and Social Welfare, a Fund for the right to work of disabled persons (Art.13), and finally, Act No.67, of March 1, 2006, Measures for the judicial protection of persons with disabilities who are victims of discrimination, adopted in implementation of Art.3 of the Constitution, by which to promote the full implementation of the principle of equal treatment and equal opportunities to people with disabilities to ensure their full enjoyment of their civil, political, economic and social (Art. 1, 1 c.). The law aims, in fact, to extend the legal protection already afforded to people with disabilities when facing discrimination in the employment context, in all those situations in which the disabled person proves recipient of discriminatory treatment outside the employment relationship.

114. By Act No. 8 of 3 March 2009 (published in GU n. 61st of March 14, 2009), in addition, the Italian Parliament approved the ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed by Italy on March 30, 2007. Article 33, paragraph 2, refers to the monitoring mechanism of the Convention at a national level. In this regard, the aforementioned law ratifying the Convention wishes to simultaneously establish the National Observatory on the Status of Persons with Disabilities, "... to promote the full integration of persons with disabilities, implementing the principles enshrined in the Convention [...]" "Law and the principles set out in the February 5, 1992, n. 104 "(Art. 3, para. 1). Within the relevant Centre, it has been established a Scientific Committee for purposes of scientific analysis and to address relevant issues in relation to the activities and tasks of the Observatory.

115. In order to better carry out its tasks the Centre has established an internal working groups engaged in studies for the deepening of the most important issues proposed by the UN Convention and in particular: the right to life and health care, the system of recognition of the condition of disability, autonomy, independent living and empowerment of people with disabilities, including education and training processes, including employment and social protection, accessibility from the perspective of Universal Design. The activities of groups which pursues two main objectives in the short and medium term, provided the Centre's role as an institution by the same law (Law n.18/2009, Article 3, paragraph 5, letters a) and b)): a) preparing a report on measures taken under Article 35 of the Convention; b) the provision of a two-year action program for the promotion of rights and the integration of persons with disabilities, implementing national and international legislation.

116. However it is noted that in 2010 only 6.4% of women with severe limitations were employed versus 12.9% of men. Among the population, the percentage is of 39.8% of women versus 61.1% of men. Even with respect to earned income, the disadvantage of women with limitations is evident: over 70% of these women, compared with 48.7% of men with severe limitations, who has an income ranging between 0 and 15,000 per year. (Istat. EUSILC Survey, year 2010).

117. As above-mentioned, at present, there are no specific studies or surveys on the issue of violence against women with disabilities, conducted on a national scale. However while expecting the incoming specific ISTAT survey, it could be quoted a survey carried out by the Italian researcher E. Molinari.

118. This study was based on the articles regarding crimes against the disabled persons over a period of ten years (1987-1997) on one of the main Italian newspapers: *il Corriere della Sera*. He observed that the family is responsible for the 83% of cases of negligence, while medical staff is responsible mainly of mistreatment (57% of cases) and sexual abuse is perpetrated mostly by foreigners (in 60% of cases). The most frequent form of violence is physical abuse (39%), followed by negligence (33%) and sexual abuse (28%). The victims were more often suffering for mental disease (56%), multiple forms of disability (17%) and physical disability (11%).

119. The current National Action Plan against gender-based violence and stalking, whose implementation is being coordinated by the Department for Equal Opportunities, provides a specific action regarding the implementation of a project for the creation of a shared database among State Administrations and Regions being involved in prevention and contrast of violence against women. Data collected will be used for the elaboration of qualitative and quantitative researches on the phenomenon. Support centres for women victims of violence and, more in general, all socio-sanitary services included in the national network of services connected with the 1522 helpline for women victims of violence and stalking, will be involved in the collection of data - with the due respect for victims' right to

privacy. In this contest, it could be provided also for the collection of data concerning specifically women and girls with disability.

120 In our Country, the overwhelming majority of disabled people (93%) live with their family. The family is therefore the "subject" which generally takes care of the disabled person. About the 37% live with their partner: of whom 27% without children, and 10% with children. However men with disabilities living with their partner are 60%, while women are only 26%. Almost one third of people with disabilities live alone (32%): they are predominantly women.

121. Among young adults with disabilities (6-44 years), 62% are children who live with their parents, while in case of adults with disabilities (45-64 years), usually is a parent who lives with their children and partners (38%).

122. For the elderly, aged between 65 and 74, the more frequent condition is that of cohabiting with a partner without children, living alone or within specific Centres. 70% of people with disabilities living outside the family are hosted in nursing home or a retirement home (especially the elderly); other (younger) adults with disabilities live mainly in rehabilitation communities or nursing home (22%) [Source: ISTAT "Disability in Italy", 2009].

123. Therefore according to our national legislation, in compliance with the principle of non discrimination, measures concerning support of the persons with disabilities are "gender neutral".

124. Under para. 36, it is mentioned, "Furthermore, the Special Rapporteur was informed that women with disabilities are generally considered as asexual human beings, incapable of founding and taking care of a family of their own, or of acquiring education and being gainfully employed. 64 Women with disabilities are offered certain training programs that lead to subordinate positions and inferior roles in the labour market, and consequently to lower paid jobs".⁶⁵ We kindly request to correct the above statement as long as there is no distinction between women and men with disabilities, either de jure or de facto. The wording indicating that "women with disabilities are offered certain training programs" is contrary to the above-mentioned background. More importantly, please note that, unlike many other countries, Italy ensures ad hoc teaching assistance (*insegnanti di sostegno*) in the schooling system for guaranteeing the integration of children and young students with disabilities. The integration principle is applied at each and every level of the school system and beyond.

125. Italian national legislation to prosecute violence against women covers domestic violence, sexual violence, violence against minors, FGM, trafficking of human beings and envisages quite severe penalties, covering also women with disabilities. Disability is indeed considered an aggravating circumstance. By virtue of Act No. 66/1996, offence against the physical and psychological integrity of women, through sexual violence can be prosecuted based on the woman simple accusation if the victim is a disabled, a minor child or is under legal guardianship. Act No. 154/2001: "Measures against violence in familiar relations", introduced "barring/protection orders": the Court can order the perpetrator to leave the family home and/or the immediate separation of the violent relative from the places frequented by the family (for example the work-place, the school of the children), if his behavior causes serious prejudice to the physical or moral integrity or to the personal freedom of the family members. If necessary, the Court can ask the social services or the involvement of specific associations in order to support and assist women, minors or disabled being abused or mistreated; it can also be ordered to the perpetrator to pay a family allowance, in case of low or lack of income.

126. Of course, Act No. 38/2009 entitled "Urgent measures in the field of public security and the fight against sexual violence and stalking" also applies to women and girls with

disabilities. With regard to sexual violence, this law also provides for: measures aimed at making it more difficult for perpetrators of sexual violence to access to certain benefits such as alternatives to detention (Article 4-bis of Law 354/1975 on the prison system); free access to legal aid, to all victims of sexual violence, regardless of their personal income (as provided according to the Presidential Decree 115/2002); new aggravating circumstances: murder committed in relation to sexual violence, sexual acts with a minor, gang rape, repeated sexual violence against the same victim (Article 576 cp).

127. As for stereotypes against women with disabilities, the Department for Equal Opportunities launched in April 2010 an awareness raising campaign on disability named “Different skills, same desire to live”. The campaign, which was broadcasted again in December 2011, aimed to sensitize the general public on the principle of equal rights for all, fostering the integration of disables in social, work or family life. The main feature of this campaign is surely the choice to fine-tuning on a positive attitude towards disability, avoiding to try to move to mercy the public opinion. Based on the concept that disability is just a “different ability”, the spot intends to strike the emotional level of the target, using a simple, pure language (that is testified also by the use of essential graphics) something that we sometimes forget: a disability may prevent a person from doing something, not do everything. And that's what makes it all the same, because no one, disabled or not, will never be able to perform everything.

128. Following the approval of Act No.18/2009 concerning the ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed by Italy on March 30, 2007, a National Observatory on the Status of Persons with Disabilities was created, with the role to advise and offer technical and scientific support for the development of national policies on disability, with particular reference to:

- the implementation of the UN Convention on the Rights of Persons with Disabilities, signed in New York December 13, 2006;
- the preparation of a two-year action program for the promotion of rights and the integration of people with disabilities and the implementation of national and international legislation;
- the promotion of collection of statistical data as well as studies and research on the issue;
- the drafting of the report on the implementation of disability policies.

129. The Department for Equal Opportunity, in the framework of its own specific competence, promotes interventions for the affirmation of equal opportunities for disabled people, in line with the principles of the above Law No. 18/2009. The main guidelines are as follows:

Funding of initiatives at national importance, which contribute to empowerment of people with disabilities through the use and practice of sports and art, or through proposals with a strong culture, promoting integration of disabled and reinforcing the perception capacity and potential recipients. The amount allocated for the financing of initiatives is 5 million.

Public notice for the acquisition and selection of applications from young researchers with disabilities, who will be awarded grants as reimbursement of expenses incurred for the acquisition of specialized equipment, material differentiated teaching, instrumentation suitable to overcome the difficulties related to disability status and / or services. For this purpose have been allocated 350.000,00 Euros.

130. Many professional groups - including the medical staff -, besides the professional secrecy, must comply with the obligation to report to police when in the exercise of their function they have been acknowledged or suspect to be in front of an offense, such as

domestic violence, in accordance with Article 331-332 of the Criminal Procedure Code. In those cases medical staff have an obligation to report (Art. 334 CCP): their complaint and the report are very important written evidence in the case of a criminal trial.

131. The following offences are prosecuted *ex officio*: Art.612 of the penal code. Threat (severe, with weapons), Art.572 of the penal code Mistreatment in the family, Art.582, para. 2, of the penal code, Serious injuries; Art.609-bis et ff. of the penal code, sexual abuse and violence against children of up to the age of 14 and in the event of victims who suffer from physical or mental problems; Art. 610 of the penal code on Private Violence; Article 612-bis of the penal code on stalking, in particular against minors or disabled persons, and Art. 575 of the penal code in case of Murder.

132. Offences punishable, upon complaint by the victim, as follows: Art.594 of the penal code Insult; Art.612 of the penal code, Threat; Art.581 of the penal code, Beatings; Art. 582 of the penal code, Lesion (up to 20 days of prognosis); Art.609-bis of the penal code in case of sexual violence against an adult or those minors who have already turned to the age of 14); Article 612-bis on stalking in all the other cases.

133. From November 28, 2011 it also possible to report case of discrimination related to disability, age, religion, sexual orientation and gender identity to the contact center 800 90 10 10 managed by UNAR (National Office against Racial Discrimination) established at the Presidency of the Council of Ministers in the implementation of EU Directive 43/2000. After a trial of just over a year, and taking into account the interconnection with the contact center UNAR widespread on the national territory, it is possible to improve the promotion and ensure the respect of the principle of equal treatment. The free helpline is available from Monday through Friday, from 10 to 20 in Italian, English, French, Spanish, Albanian, Arabic, Russian, Romanian, Chinese.

134. Italian Authorities clearly acknowledge the condition of objective disadvantage affecting disabled people, both men and women, suffer. Of course there is neither policy nor practice of discrimination against women with disabilities. Therefore we kindly request to reflect as much as possible all the above information in your report.

135. PARA.40: Italy's legal framework to combat violence against women has evolved over time. Marital authority has been abolished and both spouses have legal authority to make decision, including those concerning children. As for the statement "Sexual violence against women is a criminal offence, it is categorized as an offence against public morality, and it is prosecuted *ex officio*", it needs to be corrected as follows: "By Act No. 66/96, sexual violence against women is a criminal offence, it is no-longer categorized as an offence against public morality, and it is no-longer prosecuted *ex officio*". By virtue of Act No. 66/1996, sexual violence has been included within the category of crimes against individual rights and freedom. The criminal proceeding is thus initiated upon the mere denounce by the victim. To avoid that the victim may be threatened and then forced to withdraw it, once the complaint is lodged, it cannot be withdrawn. Plus, specific attention is paid to protect victim's privacy. The law provides for the imprisonment from three to six months for whoever discloses, also by means of media communications, the identity or the image of the victim without his/her consent.

136. On a more specific note, by the enactment of the above legislative measure: in the event of sexual violence against a women of age, the interest under consideration and to be protected is the self-determination of the women and her free choice in the sexual field (Art. 609 bis); in the event of sexual violence against children whereby the protection level is higher and therefore it is not necessary either the threat or the violence itself to start the proceeding (Art. 609 quarter), the penal code envisages that the proceeding may be initiated also *ex officio*. The proceeding may be initiated also *ex officio* in the event of a gender

based violence case committed by two or more people: sexual violence by group (Art. 609 septies).

137. PARA.41: As for the crime of stalking, additional indications should be also mentioned in the relevant paragraph. Act No. 38/2009 entitled “Urgent measures in the field of public security and the fight against sexual violence and stalking” introduced the crime of stalking in Italy. This Act has introduced new measures, such as sentencing from 6 months to a four-year imprisonment, or even harsher sentencing in cases where the perpetrator is the former partner or the husband and if the crime is perpetrated against weak subjects like minors or disabled. As above mentioned, the victim is entitled to request the Police Commissioner an oral warning order to discourage the stalker from perpetrating the crime. The law also prohibits the stalker from approaching the workplace, the house and all the places attended by the victim.

138. PARA.42: By recalling remarks provided for under para.18, it should be considered as follows: In order to ensure the absolute independence of the judiciary (See Arts 102 et ff. of the Constitution), the domestic system is based upon the discretion of the court. The fact that some Courts, in case of violence, deny the shared custody, evidences that this system can function even without typifying the cases for the joint custody, provided the application of the best interest of the child, which applies on a case-by-case basis.

139. The "Guidelines for a child-tailored justice", as adopted by the Committee of Ministers at the Council of Europe on November 17, 2010, have been intended to support Member-States in the process of adapting their legal systems to the rights, interests and specific needs of children. This soft law measure, aimed at ensuring the children's rights to be listened and informed, to legal representation, participation and protection. It arrives at a historic moment in which the Italian juvenile justice has undergone significant changes, which originate mainly from the entry into force, in 2007, of the amendment to Act No.4 of May 1983, as introduced by Act No. 149/2001.

140. The main issues concerning the role of the child within the trial as debated by scholars and practitioners of the juvenile courts can be summarized - as also explained in the Report of the First President of the Supreme Court pronounced on the occasion of the inauguration of the judicial year 2011 - as follows: the recognition of the child as substantive and procedural part either within the process of formation of the conviction of the or in the exercise of rights of defense and direct participation of all interested parties to the proceeding, in particular the child concerned. However this amendment has not ensured yet a uniform implementation across the country. In addition to that, the Court of Cassation's work shows a broader process of "*giuridiziarizzazione del diritto*" when the case-law is at the basis of the legislation so that the former has contributed to elaborate relevant guidelines, even if the current process seems far from being considered concluded.

141. The current work is focused on the complete application of the principles of the European Court of Human Rights on the juvenile trial, with the aim of matching fundamental values being not easily reconciled by the Judge, such as the best interest of the child, the right to respect for private and family life of parents, fair trial - and more generally to make more uniform the measures made under the procedural rules between ordinary and juvenile courts (the critical points that affect the application of organizational and legislative reforms are often overcome by joint MoUs with lawyers and social care-takers) on the common themes of the custody of children.

142. It has been learnt, in fact, that key areas of discussion - the role of the prosecutor, the role of the juvenile judge, the representative of the child, the role of defender, preliminary activities, office organization, effective interdisciplinary approach in dealing with cases, implementation of the *de potestate* proceedings under Articles. 330 et ff. of the civil code and those related to children born outside the wedding deadlock (*filiazione naturale*),

pursuant to Art.317 bis of the civil code in relation to the ordinary rules applied before the ordinary Court regarding the custody of children of separated or divorced couples, etc. - are prerequisites to test and identify the virtuous practices on single relevant issues. It is reported in the footnote below the 2011 Supreme Court Review for consideration⁷.

143. In order to comprehensively respond to the indications of the Rome Tribunal, it would be important to get more precise indications of the measures that you consider.

PARA.43: In the footnote below there are some rulings on the issue of parental alienation syndrome. It should however be noted that Parental Alienation Syndrome (SAP) or exploitation of children during marital conflict, represents the destructive aspect of family ties when the family disintegrates. A possible solution to this widespread problem is the use of interdisciplinary legal and psychological measures.

144. In 2000, the European Court of Human Rights (ECHR), in the judgment *Helshoz c. Germany*, addressed a growing problem in recurring situations or family breakdown, in which the "supermom" totalizing claims a role in the management of the children. The International Judge is concerned to determine the principles of law under which the rule in art. 8⁸ of the Rome Convention of 4 November 1950 is to ensure effective respect for family life, but the issues are also relevant in terms of psychological effects of the single-parent-run family. Inter-action between various sectors is the key. National case-law demonstrates that Judicial Authorities are very careful not to generalize the phenomenon.

145. In conclusion, there is awareness that the PAS is in fact a "legal matter" though being very dangerous in cases of abuse, painful for mothers, fathers, children, who may face these theories in painful separation proceedings. At present the scientific literature and international legal practitioners advise against the existence of PAS, against its admissibility in court and the need for extensive research and studies before new theories are used in complex and sensitive issues related to child-care in separations cases, it is intolerable, hypocritically, there might be the attempt to introduce such a theory, provided that as per its own tradition Italy places at the core of its activities the rights of the child⁹.

146. PARA.44: By recalling the previous relevant response, the Ministry of Interior would like to provide, as a way of example, of specific actions in favour of the social inclusion of Roma people, as follows: The Department of Civil Liberties and Immigration of the Ministry of the Interior, under the Operational Programme "Security for Development - Towards Convergence 2007-2013" – Axis II "diffusion of law" - Operational Objective 2.6 "Contain the effects manifestations of deviance", is developing the project called "Increasing the skills of the operators on the situation of Roma people", accepted for funding by a decision of the Management of PON for an amount of €

⁷ The 2011 Supreme Court Review in Italian mentioned herewith is available for consultation at the Secretariat.

⁸ The Court monitors authorities and courts to see whether they have observed the Constitution in their actions and decisions. It arbitrates in disagreements between the highest State organs and decides in proceedings between central and local authorities. Furthermore, it also decides, among other things, on the validity of the Parliament elections. Practically, this court mainly decides the validity of legislation, its interpretation and if its implementation is in line with the Basic Law. The constitutional court decides (and its Decisions may not be appealed): 1. disputes concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. conflicts arising over the allocation of powers between branches of government within the state, between the state and the regions, and between regions; 3. on accusations raised against the president in accordance with the constitution.

⁹ The case seen under the Alessandria tribunal mentioned herewith (in Italian) is available for consultation at the Secretariat

936,720.00 (including VAT). This initiative aims to create training courses for officials and social workers of the prefectures and local authorities and representatives of associations (and organizations representing Roma and Roma cultural mediators) for the creation of staff at the prefectures on how to improve synergies for the social inclusion of Roma community. This project has been implementing in the following provinces of the Convergence Objective Regions 2007-2013: Catanzaro, Cosenza, Crotona and Reggio Calabria (Calabria), Naples and Caserta (Campania), Bari, Lecce and Foggia (Apulia), Agrigento, Catania, Palermo, Syracuse and Messina (Sicily), where in the course of the various monitoring exercises it has emerged the most consistent presence of members of the Roma Community. The choice of participants in the project is managed primarily by the above Department with the cooperation of prefectures and territorial councils for immigration of the provinces. For the realization of this project and the identification of the contractor it was issued a European tender procedure.

147. **The formation:** The initiative provides for an initial training phase, a second phase of creating a network of relationships between institutions and the communities themselves and a third phase of dissemination of results.

148. The training is organized at the provincial level through the establishment of at least 20 training sessions for up to 25 people per class.

149. The individual modules are held in two stages:

a) the first consists of the formation of "base" with the methodology of "classroom work" focused on issues relating to Roma culture and management in terms of active policies of this phenomenon;

b) the second, consisting of "training laboratory", aimed at project development activities on various aspects of social integration of Roma, particularly with regard to both the Roma women, people facing discrimination due to the additional condition of women is to that of children.

150. There are two ways of evaluating training modules:

- Assessment of learning by administering questionnaires ex-ante and ex-post to recognize the increase of knowledge in the learner;
- Evaluation of customer satisfaction by administering questionnaires to detect learners' satisfaction with respect to elements of content, organization and logistics.

151. **The network:** The project aims to promote awareness of different realities, creating "a network of relationships between institutions and the communities themselves."

152. Participants, as experienced people interested in the problems Roma and from different organizations (prefecture, local authorities and associations), through the reciprocal relationship established by the "network", aimed at identifying the most appropriate means to promote social inclusion of Roma.

153. For this purpose there shall be concrete projects related to various areas of interest (social health care, maternal education, the law and education, facilitating access to employment) that take into account the situation on the territory of the community and are likely to be used for possible, future interventions. To encourage the creation of the network of those involved, there are seminars at the provincial level, during which will be presented and discussed projects designed to verify the practical feasibility at the local level.

154. An important aspect of the network is formed by the participation of Roma cultural mediators who can facilitate the creation of stable points of reference, both for institutions

and for the communities themselves, by targeting members of these communities on the services in the area, with reference to 'registries, health, education, training, rest areas, etc..

155. Dissemination of results: There are moments of territorial animation with the possibility of meetings with the Roma community through the establishment of at least 4 regional conferences for the presentation of the results of training and good practice and publication of related acts.

156. PARA.46: The so-called "security package" dates back to the years 2008-2009. This basically includes: Law Decree No. 92/2008, as converted into law, by Act No. 125/2008; and Act No. 94/2009. This legislation is meant to curb criminal behaviours of individuals and no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia. The "security package" has never introduced any obligation to denounce undocumented migrants, by physicians or school principals. On the contrary, it fully implements the constitutional principles relating to the access to education and to health for everyone¹⁰.

157. In general terms it should be considered that the Italian legislation does not impede the rental of accommodation for foreigners. The aim of the security package is to curb the criminal behaviour, in particular of organized crime. Since irregular migrants are often employed as work-force of the organized crime, the Legislator has intervened in this respect by the Security Package. There is no limitation to basic services such as access to education and to health-care. On the contrary the rationale behind the punishment of those who rent accommodation to irregular migrants stems from the relevant judicial trend. It has been noted that those renting apartments to irregular migrants either usually apply out-of-market prices or allow this solution irrespective of the real capacity of the apartment and thus resulting also dangerous for the community: It has occurred that in small two-room apartments there were ten or more people.

158. In the relevant paragraph, it is mentioned that "Also, recent legislation criminalises irregular migration, punishable by a fine of up to 10,000 Euros, with the maximum detention period extended from 60 to 180 days. As a crime punished *ex officio*, all public officials and public service agents are mandated to provide information on irregular migration. Failure to do so is an offence".

159. By requesting to jointly read the above indications with information provided for under para. 75, please note that irregular immigration is currently punished with a fine: that para. In your report needs to be corrected. The maximum detention penalty that you mention, is not a detention penalty and refers to asylum-seekers staying in the CARA and this term was fixed by the EU. Please delete the reference to 180 days which has nothing to do with the fine

160. More importantly the statement "public officials are mandated to provide information on irregular migrants otherwise they would commit an offence", does not reflect the situation correctly. Physicians and principals who are also public officials do not

¹⁰ As for the children, the relevant legislation ensures that "any foreigner, born in Italy, who has resided legally and without any interruption, acquires the Italian citizenship at the coming of age, provided that s/he makes a declaration to this end, within one year". The rationale behind this provision is clear: guaranteeing the implementation of the best interest of the child principle in the event of omission or delays in the registration procedure by the parents. It is sufficient that the child concerned can prove his/her stay, for instance by medical or school certificates. Such openness is confirmed by the Supreme Court that has recognized the right of a father, illegal migrant, to receive a stay permit, in order to take care of his children living in Italy. More importantly, it should be stressed that as for the birth declaration (birth register and civil status register), no residence-related document shall be produced since it is sufficient the submission of a mere declaration.

report whoever is irregular to the Police Authorities in compliance with the constitutional principles. Therefore irregular migrants are not denounced if seeking for health-care and the children of irregular migrants have free access to education and nobody denounces them (Please see below under para.75).

161. As for the rules of "The security package", with particular reference to the paragraph of Article 40.3 of Law 15 July 2009, No. 94, which regulates the cooperation of associations of private citizens to the protection of urban security and the prevention of situations of social disadvantage, providing, inter alia, that "the mayors, in agreement with the prefect, may secure the cooperation of unarmed citizens to order to report to the Police Force of the State or local events that may cause damage to urban security or situations of social distress, it should be noted the Constitutional Court ruling of June 24, 2010, n. 226 - which ruled on the constitutional legitimacy promoted by Tuscany, Emilia-Romagna and Umbria, in respect of the introduction of the above provision. The Constitutional Court declared the constitutional illegitimacy of Art. 3, paragraph 40 of Law of July 15, 2009, No. 94 (provisions relating to public safety), limited to the words "or social distress". According to the Court, in fact, deems that this issue falls within the social policy field relating to social services and thus falling within the so-called residual legislative competence of the Regions.

162. PARA.47: Act No. 228/2003 against human trafficking introduced the offense of reducing a person to or keeping him/her in slavery or servitude, trafficking in persons and trading in slaves. It also provides for the creation of a short term protection programme granting accommodation, food and healthcare to victims in protected centres.

163. PARA.48: Legislation also includes a special residence permit for victims of trafficking, as part of a social protection package, which is independent from any reporting/provision of information by the victim as regards the traffickers. It further offers victims of trafficking the opportunity for a more substantive integration program. The Program for temporary assistance (so called "art 13" projects) provides EU and foreigners victims of "reduction to or maintaining into slavery or servitude conditions" and "trafficking" (offences envisaged by Articles 600 and 601 of the Criminal Code) with accommodation, social assistance, and health-care services within a three-month programme. Once the programme is concluded, the assisted persons can continue to be helped under the long term programme. The Programs for long term assistance and social inclusion (so called "art 18" projects) provide both EU and Non-EU nationals with social protection measures of an high standard, such as individual recovery and social integration plans, long term residential care facilities, health-care, counselling, legal assistance, education, vocational trainings, apprenticeships and job placement. This a one-year program which can be extended if necessary.

164. The main objective of the assistance measure provided for by the Italian Government is to allow the trafficked or exploited persons to escape from the organized crime or the individual exploiters. This program offers them the possibility to start a new life in Italy or in their country of origin. To this end victims of trafficking or exploitation can benefit from either the assisted voluntary return to their country of origin if they so request or a special residence permit on social protection ground, as foreseen by the above Article 18 (of Legislative Decree No. 286 of 1998). The granting of this residence permit is independent from reporting the traffickers/exploiters to the law enforcement authorities by the victim. As for relevant data and results, from 2000 to 2011, DEO co-funded 640 projects under Art.18 of Legislative Decree No. 286/98 and 146 projects under Art.13 of Act No. 228/2003, respectively. From 2000 to 2011, 20.142 persons were assisted in the framework of "art.18" programs and 2.891 persons were assisted in the framework of "Art. 13" programs, respectively.

165. PARA.52: Act No.183 of 12 November 2011 introduces important changes and clarifications regarding some labour institutes. The measures provided for in Art.22 of the Act, including, in particular, the new apprenticeship contracts, the so-called integration contract (with particular reference to the inclusion of women), the part-time and tele-working.

167. For apprenticeships, to promote youth employment and therefore women, the law recognizes that those companies that employ work-force equal to or less than nine employees enjoy the total de-contribution (INPS and Inail social security contributions) for three years for all apprenticeship contracts concluded, as from 1 January 2012 to 31 December 2013. It will be the Ministry of Labour and Social Policy, from the year 2012, to devote, by decree, each year, funds for training during the apprenticeship, up to a maximum of 200 million Euros, of which 50 per cent for the type of apprenticeship or job contract.

168. There are incentives for the integration, with particular reference to the contracts concluded in favor of women residing in areas where the female employment rate is at least 20 percentage points compared to the male or the female unemployment rate. This incentive is aimed at women of all ages with no regular paid employment for at least 6 months. Moreover, in order to improve the reconciliation of working and living, introduces some measures aimed at furthering the part-time and telecommuting, the latter dedicated mainly to women, disabled and mobile workers. Moreover it has been also recognized the so-called "Contracts of proximity" to the de-contribution 10% and the remission of contributions on amounts paid by way of productivity, improved service and incentives in accordance with provisions of Art.8 of Act No.148/2011. In particular, the reduced VAT and decontribution relate to amounts paid in 2012 to employees of the private sector in the implementation of collective bargaining or territorial agreements related to increases in productivity, quality, profitability, innovation, organizational efficiency, linked to company's results and to any other item of relevance to business competitiveness and therefore also to ensure flexibility and the conciliation family/work.

169. PARA.55: As above reported, the Department for Equal Opportunities has also the function to prevent and combat violence against women (Ministerial Decree of February 25, 2011). Please note that the two bodies "National Observatory against sexual and gender base violence" and "Permanent forum against severe forms of harassment and violence against women" have not been established. Instead, the Department for Equal Opportunities currently hosts the "Committee for the monitoring of the actions undertaken under the Nation Plans against gender violence and stalking".

170. PARA.56: Following the establishment of the new Italian Government last November, the Minister of Labour, Social Affairs and Equal Opportunities (MOLSAEO) has been mandated to Equal Opportunities by the President of the Council of Ministers (Decree of December 13, 2011) and is now also responsible, as political body, for the implementation, through the Department of Equal Opportunities, of policies related to equal opportunities, including ensuring effective promotion and coordination of all government's actions relating to women's rights and equal opportunities in the area of health, research, education, environment, family, employment, public offices and women representation, protection from exploitation and sexual abuse, the fight against paedophilia and child-pornography besides guaranteeing the full implementation of gender equality policies relating to entrepreneurship and labour market. This Minister also promotes and coordinates all actions to fight trafficking and exploitation of human beings as well as violence against women and the girl child.

171. PARA.61: There is no reference to the State Police. Since 1959, when the "Women Police Corps" was introduced in the State Police, particular attention has been paid to women and children related issues so that specialized units have been managing that. Since

1998, within all 103 Local Police Headquarters across the country there is a “Specialized Investigative Unit dealing with sexual crimes against children and women” (103 Units).

172. PARA.62: Needless to say, this is not the case only in Rome. What happens in Rome takes place in all the other Public Attorney's Offices whereby the offenses relating to vulnerable groups are treated by specialized teams. More and more it is evident the proliferation of MoUs among relevant stakeholders, as is the case with the Public Attorney's Office in Santa Maria Capua Vetere, Milan, Turin, Naples, etc..

173. PARA.63: Italian Authorities deem, there is the need to further reflect- as much as possible - the “National Action Plan against gender-based violence and stalking”, which is the first Governmental Plan aimed at developing a relevant comprehensive response, in synergy with the main actors involved at a local level.

174. The Plan was developed through a participatory process – from the national to the local level – by involving all public and private stakeholders. Most relevant NGOs and civil society organizations involved in the contrast of gender-based violence and domestic violence and in victims’ support services were invited to make proposal and suggestions at various drafting stages, in order to raise further awareness and understanding of the specific needs in terms of services to be offered and implemented.

175. As a result, this Plan is now the main measure to develop and developed coordinated actions to prevent and combat violence and provide protection, support and reintegration of victims, by all stakeholders - both public and private ones. The Plan provides for specific guidelines which cover all different policy fields, such as socio-cultural, health, economic, legislative and judicial, so as to achieve the following six core objectives:

- to ensure an adequate, widespread and effective level of information.
- to provide and implement a national network of centres providing services for victims of violence (the so called “anti-violence centres”), as well as and other public and private relevant stakeholders working in this field at local or regional level, to ensure adequate protection and assistance to victims throughout the Country;
- to develop specific training interventions aimed to all professionals involved in the issues of violence against women, in order to contribute to the diffusion of a culture of respect towards human rights and gender-based specificity;
- to provide a structured collection of data and information to better understand the phenomenon and monitor its evolution;
- to improve assistance and support services provided to women victims of violence and their children;
- to increase protection for women victims of violence by enhancing the collaboration with the Police.

176. In Italy, some Regions (Abruzzo, Basilicata, Calabria, Campania, Friuli Venezia Giulia, Lazio, Liguria, Marche, Piedmont, Puglia, Sardinia, Tuscany), approved specific norms to promote the prevention and contrast of gender-based violence, including through the funding of crisis’ support centres and shelters for victims.

177. In the process of elaboration of policies and measures regarding their specific activities – the implementation of National Plan against gender-based violence and stalking among the others, the Department for Equal Opportunities carries out periodical consultations with NGOs and other civil society organizations operating in the field of prevention and contrast of gender-based violence.

178. PARA.64: The “National Plan against gender-based violence and stalking” expressly recognizes the role of civil society organizations. In Italy, support centers for

victims of gender-based violence are about 172; 74 of those are also shelters (survey of the Department for Equal Opportunities - January 2011).

179. To give support to the anti-violence shelters and centers is one the main actions of the plan. To this purpose in the second half of 2011 massive financing was provided given to civil society organizations, for a total amount of 14.7 million Euros. Resources are in the process of being assigned based on particularly competitive selection mechanisms. In particular, with a first Call for Proposals, aiming to the establishment and strengthening of local "anti-violence networks", 3 million Euros have been allocated in support of projects developed by municipalities in partnership with public and civil society organizations concerned with the issue of violence against women and aimed at improving quality and quantity of specialized services on all the national territory. By means of a second Call for Proposals, a total of 10 million Euros were specifically allocated to anti-violence centers and shelters. The primary objective is, as already specified, to increase, at national level, the number of safe-places (shelters) for women (and girls) victims of violence and, eventually, their children. Priority is given to safety aspects of facilities and specialized services provided. Moreover, in the evaluation criteria, is particularly appraised project's compliance with the legislation in order to overcome and eliminate architectural barriers to facilitate access to disabled people.

180. More in detail, 6 million Euros were devoted to the implementation of measures of support to already operating centres offering services to victims at particular risk of further violence, while the remaining 4 million were finalized to create new shelters. With a third Call for Proposals, 1.7 millions Euros have been allocated to promote specific training interventions for health workers who carry out the first cares to victims of sexual and domestic violence. This measure is especially aimed to training of health professionals and nurse working in Emergency departments' "first acceptance", as well as psychiatrists, physicians, gynecologists, psychologists, sociologists, hospitality operators, 118 operators, social services' operators. The training courses that will be funded will be addressed to provide an adequate knowledge of the issue of sexual violence, domestic violence and stalking, thus facilitating operators in the identification of cases of violence and enabling them to provide health care to the victims and to readdress them towards specific structures that can help them to overcome their trauma and get themselves out of violence. In addition, interventions should include, at the end of the training, the implementation, in the Emergency Rooms, of a specific path dedicated to the victims of sexual violence, domestic violence and stalking.

181 On May 30, 2010, the Ministry of Interior and the Department for Equal Opportunities, have signed a Convention for the homogeneous training of the staff of the State Police, Carabinieri Corps and Guardia di Finanza. The Convention descends from the Memorandum of Understanding between the Ministers of Interior and Equal Opportunities of July 3, 2009. Under this Convention specific training courses for law enforcement agency are being developed, using behavioral and organizational models that have been tested in some territories (for example: Prosecution Office of Cosenza, Police Headquarters of Catania and Verona) using the protocols SARA "Spousal Assault Risk Assessment," SILVA "Stalking victims and risk assessment for Authors" and EVA "Examination of Violence Acted". The aim of the project is to allow the trainees to provide support to victims of gender violence through shared methods of work and avoiding secondary victimization.

182. As part of the National Action Plan against gender violence and stalking was also planned a specific training session aimed to sensitize the judiciary operators and magistrates (in collaboration between the Department for Equal Opportunities and the Ministry of Justice), although taking in the due account the independence accorded to the organization of judicial offices.

183. Another relevant support service is the national toll-free helpline 1522 for victims of violence, a service provided by the Department for Equal Opportunities of the Presidency of the Council of Ministers. The 1522 helpline provides listening and support to women and girls victims of violence and, since 2009, with the entry into force of L.38/2009, to victims of stalking. The number is active 24 hours a day, 7 days a week, with reception available in many languages. The telephone operators dedicated to the service provide an initial response to the needs of victims of gender-based violence and stalking, offering useful information and guidance to the health and social services public and private bodies, present at local level. The service allows victims to gradually approach specific support services, with the absolute guarantee of anonymity. Since 2010, a specific technical operational procedure shared with law enforcement for emergency cases has been successfully experimented.

184. PARA.67: With regard to the statement, "Victims of domestic violence are economically dependent on the perpetrator of violence", we kindly request to consider and reflect that domestic violence occurs under any circumstances, irrespective of the social or economic conditions. The generalisation stemming from the above statement should be kindly re-considered and this should be thus kindly re-phrased.

185. PARAS.68-69: In terms of the repression of relevant crimes, the Penal Code offers a wide range of offences typified and referring to any forms of violence against women: Article 570 of the Criminal Code indicates the failure to comply with family assistance, Art.572 refers to family maltreatment, Art. 609 bis et seq. refers to sexual violence. By Act No. 38 of 2009, it was introduced under Article 612 bis, the crime of stalking. Previously, in 2006 with Law No. 7 of 9 January 2006 it has been also introduced the crime of female genital mutilations under Article 583 bis of the penal code. It seems necessary to emphasize that in terms of penalties the criminal law severely punishes the perpetrators of sexual violence (up to 15 years in prison for aggravated cases), of human trafficking (8 to 20 years imprisonment) and female genital mutilation (the latter was positively considered on the occasion of the last consideration by the CAT Committee in May 2008). The statute of limitations applies after 15-20 years from the perpetration of the crime. Therefore such offences are always defined by the justice and the cases under statute of limitation are a few. The same reasoning applies to the other categories of crime, though the relating statutes of limitation are lower: approx. seven years and 6 months for cases under Art 572 c.p. and Art. 612 bis c.p..

186. The latest changes to c.p.p. on the matters concerns the system of precautionary measures through the introduction of Article 283 ter, providing for the precautionary measure of prohibition to approach the places frequented by the victim. The regulations introduced by Law No. 38 of 2009 supplement the system of precautionary measures and is of paramount importance, especially for the crime of stalking, with the immediate application of the order not to approach the victim with the aim of avoiding an escalation of violence.

1. Art 283-ter (Prohibition of approach to the places frequented by the victim).
2. If there are additional needs for protection, the court may order the defendant not to approach certain places usually frequented by close relatives of the victim or by persons living with or otherwise related to this by affective relationship or to maintain a certain distance from such places or by such persons.
3. The court may also prohibit the defendant from communicating by any means, with the persons referred to in paragraphs 1 and 2.
4. When the attendance of the places referred to in paragraphs 1 and 2 is necessary for business purposes or for housing needs, the judge prescribes procedures, and may impose limitations.

187. Procedurally, it has been also envisaged the possibility to resort to the "recording evidence (*incidente probatorio*)" to take the statements of the woman, even if an adult, victim of sexual violence. The aim is to protect the victim from the trauma deriving from the revival during the trial.

188. Art.4 of L. D. of 02.23.2009 No. 11 as converted into Law No. 2009 brings changes to Article 38 of Consolidated Text of the decree of the President of the Republic 30 May 2002, n. 115, on legal fees and free legal aid, providing that "A person injured by the offenses referred to in Articles 609-bis, 609-c and 609-g of the Penal Code may be eligible for legal aid in derogation of the state income limits provided by this decree."

189. This rule is a particularly important piece of legislation aimed at raising the standards of protection for women victims of sexual violence. Regardless of the income of the victim, free legal aid is provided for by the State. Often, the victim of sexual violence (even more so if a migrant) is without adequate economic resources and participates in the process as a mere witness and not as a civil party entitled to receive compensation for the damages suffered. The foregoing provision enabling the victims of sexual assault to access legal aid allows them to choose a legal counsel (which will be paid by the State) and thus obtain a satisfactory legal assistance. However we acknowledge that there is the need to ensure adequate coordination/networking between all relevant stakeholders in order to ensure the extensive application of the above provision.

190. PARA. 70: If the spouse does not pay for alimony or child support, he/she will be considered accountable and face the offense under Article 570 of the Criminal Code.

191. PARAS.71-72: The judge has to avoid this risk. However it should be considered that this sector is characterised by a high number of conflicts, for instance, between associations in support of fathers versus associations in support of mothers.

192. PARA.73: Please refer to the above information under para.23, stemming from the National Strategy on Social Inclusion, by which it has been decided (pag.3) that the term nomad will be no-longer utilized. More importantly the administrative state of emergency, which has nothing to do with the UN-related state of emergency concept (ICCPR), was aimed at facilitating the allocation of human and financial resources according to the relevant civil protection law to deal with the situation in the so-called "nomad camps" whereby there were not only Roma people but also Non-EU nationals under very precarious safety and socio-health conditions. Indeed we kindly request you to re-phrase the content of this para. due to the superposition of different concepts and situations. We are thus at your disposal for further information, if needed.

193. PARA.75: The so-called "security package" dates back to the years 2008-2009. This basically includes: Law Decree No. 92/2008, as converted into law, by Act No. 125/2008; and Act No. 94/2009. This legislation is meant to curb criminal behaviours of individuals and no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia. The "security package" has never introduced any obligation to denounce undocumented migrants, by physicians or school principals. On the contrary, it fully implements the constitutional principles relating to the access to education and to health for everyone.

194. More specifically, provided that the security package deals with various subjects, mention may be made of the following ones: As for the offence of illegal entry and stay in Italy, the relevant provision is not applied to those migrants who are intercepted in territorial waters and are returned to the country of origin/transit. Plus it has been reduced to a pecuniary penalty.

195. As for the issue of the common aggravating circumstance, it has been declared illegitimate by the Constitutional Court, by judgment No. 249/2010. The rationale of the

above provisions was determined by the increasing trend, observed by the Italian judicial system, on the involvement in organized crime of illegal migrants being used as workforce.

196. In order to address, more effectively, the illegal immigration (and its possible connection with organized crime) and its negative effects on the society as a whole, including on the hundreds of thousands of legal migrants who arrive to Italy, to work honestly, it has been introduced the payment of a minimum tax and a test of the Italian Language as for the release or the renewal of the stay permit.

197. The granting of the citizenship for foreigners is based upon the *jus solii*. The relevant legislation passed in 1992 (Act No. 91/92) has been supplemented by the security package for the case of family's reunification, in the event of marriage. This envisages the release of the residence permit after a two-year period of legal residence of the spouses (couple) in Italy, while in the past it was set a six-month term.

198. As for children's rights, the relevant legislation ensures that "any foreigner, born in Italy, who has resided legally and without any interruption, acquires the Italian citizenship at the coming of age, provided that s/he makes a declaration to this end, within one year". The rationale behind this provision is clear: guaranteeing the implementation of the best interest of the child principle in the event of omission or delays in the registration procedure by the parents. It is sufficient that the child concerned can prove his/her stay, for instance by medical or school certificates. Such openness is confirmed by the Supreme Court that has recognized the right of a father, illegal migrant, to receive a stay permit, in order to take care of his children living in Italy.

199. Over the last years there has been a specific concern about the possible limitations to enjoy the right of access to health-care service and to school. In this regard, Italy fully observes the relevant constitutional principles. No limitation to the right to health and to education has been introduced so far. The security package does not oblige physicians or school principals to denounce illegal migrants. More importantly, it should be stressed that as for the birth declaration (birth register and civil status register), no residence-related document shall be produced since it is sufficient the submission of a mere declaration.

200. PARAS.76-111: Please note that the quota system has been introduced for the opposite reason. It has been introduced to avoid classes with only foreigners children: a sort of ghetto-classes. In order to ensure the integration of the increasing number of foreigners children and youngsters enjoying access to education (Please see the Italian Constitution), Italian Authorities have decided to ensure the quota system for the better integration and inclusion of the above groups.

201. PARA.79: On a preliminary note, it should be considered that alternative measures to detention are released in line with specific requirements, including in particular the holding of a fixed abode.

202. With regard to the institute of "early release (*liberazione anticipata*)" provided for and regulated by Art.54 of Law No. 354/75 (Prison Law), this benefit consists in a deduction of 45 days in each six-month sentence to be served and may be granted to the condemned person who has given proof of participation in the work of rehabilitation.

203. The work of rehabilitation is linked to Article 27 of the Constitution, under which penalties should aim at rehabilitating the offender. During the term of imprisonment in particular re-educative measures (aimed at allowing, at the end of the sentence, a real reintegration into society) are detectable for more:

- In the activity held by the observation of educators, psychologists, etc., involving the subject in a work of analysis of their experiences and their own situation, critical review about the crimes committed, of planning for the future, etc..

- The offer of educational activities (school courses, professional, etc.), Work (inside or, in some cases, outside the prison), etc..
- The same system of rules that governs civil life in general and intra-mural in particular: the detainee in fact, added to the prison environment, the strategy must know how to manage relationships with peers and professionals, respecting the rules.

204. The first two instruments require active intervention of the penitentiary, that shall prepare, respectively, the activity of observation and offer the detainee the opportunity to follow training courses, carry out work, etc.. For his/her part the prisoner will collaborate in this work of rehabilitation, showing an interest in (and then asking), commitment and good performance.

205. The third tool is instead delegated to that person and does not entail, except indirectly, an active role of the Penitentiary Institution.

206. In granting early release, the Supervisory Judge shall assess the degree of participation of inmate to the rehabilitation work under the three groups of instruments listed above.

207. Although what the prison is able to offer inmates is not always sufficient to employ all those who are willing to do it, in many cases inmates have to adapt themselves to do what is realistically can be done. In order to allow all the inmates, the Institutions resort to monthly-shift jobs. The inmate who refuses to work in prison despite having the option is therefore judged negatively for his/her approach, save good reasons such as, in particular, health reasons incompatible with the type of work offered. His/her position cannot be regarded as justified if the refusal motivated by fear of losing the right to unemployment benefits (this benefit, in some cases, may be higher than the salary for the work actually performed)-allowance which, among other things, according to a correct interpretation of the relevant legislation should not apply in relation to detainees held in prison for the periods within which they work, the allowance in question being incompatible with the rehabilitative nature of prison labor.

208. The granting of early release, finally, is evaluating each semester, with the result that may well happen that one semester is evaluated favorably and unfavorably judged to be the next, or vice-versa. This "separately" evaluation of behaviour from a semester to another of course affects the above decision.

209. As regards the application of these principles in specific cases of prisoners who complain about the inconsistency of the measures of surveillance magistrates, it would be necessary to acquire additional elements to examine the positions held in relation to the measures subject to denial.

210. With particular reference to "alternative measures to the detention", it certainly requires a serious reflection on overcrowding, but it is not carefully considered that about 40% of these inmates in our prisons is represented by foreign nationals, for whom access to measures outside the prison is in fact precluded either because of the high risk of fleeing or for reasons related to the absence of external resources in the area, such as work, family or home.

211. PARA.81: There is a draft legislation before the Parliament aimed at "The reintegration of detained at work, including support measures for those employers hiring them (Chamber Act No.124)".

212. PARA.82: On the wake of similar initiatives carried out at the European level, and considered the underrepresentation of women as members of boards of directors and auditing bodies of publicly traded companies listed in the regulated markets, Act No. 120 of

July 12, 2011 was approved as a joint initiative of majority and opposition. This has supplemented Legislative Decree No. 58 of 24th February 1998 (the so-called Unified Text on financial intermediation (TUF), with the aim to strike a balance in the gender representation within the boards of the above-mentioned companies. The law envisages a sort of regulative “double track” that applies to both the companies not managed by Public Administrations (direct application) and the companies with a public participation (refer to ad hoc regulations to be issued).

213. Article No.1 of the Law prescribes that the statute of the companies must also lay down that the division of directors to be elected be made on the basis of a criterion ensuring a balance between genders. The less-represented gender must obtain at least one third of directors elected. The statute must also regulate the method of formation of the lists and the cases of replacement during a mandate, in order to guarantee compliance with the division criterion provided for in the law. It must be noted that for the first mandate in application of the law (2012-2015), in order to promote a gradual implementation of the new legislation, Legislator has ordered that gender balance will be considered as fully implemented only when the underrepresented gender will obtain at least one fifth of the board members' total number. If the composition of the board of directors resulting from the election does not comply with the division criterion provided for in the law, CONSOB warns the company involved to comply with this criterion within the maximum term of four months from the warning. In the event of non compliance with the warning, CONSOB applies a fine from 100.000 to 1 million Euros, according to criteria and methods laid down in its own regulations and sets a new term of three months for compliance. In the event of further non-compliance with respect to the new warning, the members elected lose their position. Similarly, the legislation also applies to the composition process of the auditing bodies with a similar procedure (both at provisional and sanction level) as that applying to the management bodies. The new legislation will be applied starting from the first reelection of the company bodies and after one year from the date of the entry into force of the law.

214. The draft law on "Measures to reform the labor market in a growth perspective", approved by the Council of Ministers on 23 March 2012, has two articles that reinforce women access to labour market. In particular Article 55 ("Protection of motherhood and fatherhood and combat the phenomenon of blank resignations") aims to address the problem of blank resignations, introducing simplified procedures than those already required by Act No. 188, 2007.

215. These new modalities allow to preserve both the freedom to negotiate the worker or the employer's legitimate expectations arising from the conduct of the employee. In particular, in order to ensure consistency between the declaration of will of the worker and the intent to conclude the contract by the employer, it is strengthened the regime of validation, which becomes the condition preceding the resolution of the employment relationship. Furthermore it is increased, the period of time within which the validation can take place. Other simplified procedures can also be identified by decree of the Ministry of Labour and Social Policy. Notwithstanding the possible criminalization of fact, it is contemplated that in cases of abuse of the white sheet by the employer it may be enforced an administrative penalty in accordance in line with the provisions of Law No. 689/1981.

216. Article 56 ("Parenting support") introduced on an experimental basis for the years 2013-2015, two institutions in support of parenting: 1) parental leave mandatory in favor of working fathers, equal to a period of three days, even continuous, off work, to be enjoyed in the five months since the birth of his son, 2) the service of baby-sitting for the working mother, through the payment of vouchers to be used in the eleven months of compulsory leave and in alternative to the optional.

217. On 1 March 2008 it entered into force the ministerial decree of 30 October 2007. The decision establishing the System of Mandatory Communications, imposing an

obligation on all employers and individuals authorized to be effected by electronic communication hiring an employee. With this system with a single communication, the person required to fulfil his/her duty to notify all appropriate agencies.

218. At about 3 years from the implementation of the system we can provide some important data that provide both the dynamic framework of employment (the data are currently available to 30.06.2011). Mandatory Communications from the analysis shows that in Italy to 30.06.2011 have been activated to women 1,368,942 contracts, 64,854 more than the same period last year, and 103,902 over the same period in 2009, a total of 2,799,135. The data for the first half of 2011 confirms the results of previous years, so the North, compared to central and southern regions, has the highest number of contracts activated.

219. Certainly in the distribution by sector of activity there was a significant proportion of women than men, prevalent, activations in terms of the contract, in the areas of Trade, Hardware, Hotelling, Education, Health and Personal Assistance. It is also important to note that, between 2010 and the first half of 2011 in Italy we have witnessed the collapse of new hires, a setback that has affected both the male and female groups, and covered well across all major types contract (permanent, fixed, Apprenticeship, Partnership Agreements).

220. The phenomenon has also affected the Non-EU component of the workforce available in Italy, so the number of new contracts fell between 2010 and the first half of 2011, approximately 50%.

221. What emerges from the Mandatory Communications is a general reduction in the number of contracts activated from 2008, year of entry into force in the new system, both for working women and men. This situation is due certainly to coincide with the occurrence of the global economic crisis, which of course even Italy has been affected. Perhaps indeed, our country has been hit hard, considering the number of people employed in industry and construction sectors, which are the sectors that have suffered most from the recession.

222. The employment crisis has manifested itself in different ways for the female component of the workforce, where layoffs have been more limited due to the use of contractual forms, such as part-time jobs.

223. PARA.83: The migrant workers working in domestic-care services if fired are not repatriated, and may enter into a contract with another employer.

224. PARA.85: The Department for Equal Opportunities and Istat have signed in April 2012 an agreement for the realization of a new survey on "Violence and abuses against women inside and outside family. The survey will provide an update of the 2006 survey, plus some focuses on violence on women with disabilities and migrant women (DPO).

225. The Special Rapporteur notes limitations in efforts of government institutions and CSOs to collect disaggregated data and statistics related to violence against women, including femicides. The 2006 ISTAT survey is the most recent official source of data about violence against women. It accurately reflects the actual prevalence of violence against women in Italy even if it does not include data on women with disabilities, women from the Sinti, Roma or other minority communities". FOOTNOTE 137: The new edition of the survey (2012/2013) will also provide estimates of violence for women with disabilities and for foreign women. With regard to femicide, there is a specific data-base of the Ministry of Interior dealing with homicide from which it is possible to get specific information on femicide.

226. PARA.87: At the institutional level, it should be considered that the above-mentioned National Plan on Gender-Based Violence and Stalking envisages specific training courses and relating measures, as follows: "3a) Preparation of specific training courses for law enforcement officials, by using behavioral and organizational models as

already tested on the territory (as was the case with the Prosecutor's Office of the municipality of Cosenza, the Police Headquarters in Catania and Verona) through ad hoc Protocols, namely SARA (standing for "Spousal Assault Risk Assessment"), SILVA (standing for "Stalking victims and risk assessment") and EVA (standing for "Examination of Violent Acts). 3b) Awareness-raising campaigns for the entire judiciary to be better trained in this field (Department of Equal Opportunities and the Ministry of Justice). 3c) Awareness-raising of the above-mentioned Stalking Unit, as laid down in the MoU signed by the General Command of the Carabinieri Corps and the Department for Equal Opportunity".

227. The Carabinieri Corps that pays the utmost attention to "violence against women", has organized many activities that cover both basic training and refresher courses. As part of basic training courses, even in the academic year 2010/2011 as well as in the past, they have ensured the teaching of human rights law (which has an interdisciplinary character, analyzes the cases of "compression" of such rights during the 'policing and also considers the activities of assistance and support to victims of crime), for Carabinieri Officers, Warrant Officers, Brigadier, Carabinieri servicemen, for a total of 2,600 soldiers. In this module it has been envisaged the participation of Professors from Sant'Anna University in Pisa.

228. As part of further education, there were the following activities:- Prevention and Investigation of Sexual and Gender Violence Related Course (two courses in 2011, lasting two weeks each, at the headquarters of CoESPU of Vicenza), restricted to the formation of 60 units total (Superior Officers from the police in the degree Col. / Lt.Col. / Maj. or equivalent in the civilian sector) for operation in Peace Support Operations (PSO) and aimed at preparing the staff:-effects / consequences / implications of sex offenders; - acquisition of skills for managing ethnic, cultural, political, religious and other differences in the mission area; in the development of skills in the application of integrated operational procedures to address the problem of sex offenders; - in conducting investigations about the crimes mentioned in the context of a multinational mission, including assistance to victims; - Training and awareness on counter-trafficking for peacekeepers (IOM-TACTIK project, funded by the U.S. State Department and conducted in partnership with the International Organization for Migration) at the headquarters of CoESPU, lasting five days, restricted to 28 Officers under the Departments of education / training (or charge for use in operating theaters), aimed at increasing the knowledge of international peacekeepers on trafficking in human beings and improve the capacity of learners to contribute positively to the efforts of the host country effectively combat trafficking in persons at all levels (prevention of trafficking, protection and assistance of victims and prosecution of offenders). During the activity has been shown, by personnel of the NATO School Commandant, the Code of Conduct for UN peacekeepers; - Seminars for training of personnel of the Territorial Departments on the subject of persecution, organized on a day to provide for Captains of the Company, the Operating Units and the Carabinieri Stations, a targeted knowledge of the phenomenon of stalking in the psycho-social, legal and investigative (about 5,700 units). .

229. In addition, the personnel: - Has participated in the course Train the Trainer workshops: Anti-discrimination & diversity and the other Fundamental rights topics in police training, which lasts two days, organized by the European Agency for Human Rights (FRA) and the European Academy of Police (CEPOL) at Bramshill (England) to explore the theme of discrimination, diversity and rights in the activities of Police, with reference to the gender perspective and the internal group dynamics; Was included in the group of trainers ODIHR (Office for Democratic Institutions and Human Rights), composed of experts of the Police Forces in the OSCE (Organization for Security and Cooperation in Europe), with the task of promoting respect for human rights, tolerance, non-discrimination as an expression of the concept of rule of law.

230. Following the signing of the agreement between the Department for Equal Opportunities of the Presidency of the Council of Ministers and the General Command of the Carabinieri, it was established at the Racis (Grouping Carabinieri Scientific Investigations) a Section against Violence to develop gender studies and research in the areas facing the deepening of the problem and update the strategies of prevention and combating violence in the form of stalking/persecution, violent, sexually assault.

231. It is under current elaboration the development of some seminars (funded by the Department for Equal Opportunities) aimed at ensuring a uniform teaching between different police forces in the field of conflict prevention and sexual and gender-based violence (approximately 1,200 units). Teaching, lasting two days, will be divided into four thematic areas (legal, psychological, sociological and technical-operational).

232. PARA.88: Your report indicates “Factors contributing to the inability of the central government to intervene in such cases include decentralisation policies, the challenges of dealing with a lack of political will at the local level, as well as procedures which may hinder the capacity to manage and spend the funds received. This then affects the responsibility of the central government to fulfil, with due diligence, its international and national obligations to effectively address violence against women”. Please consider that decentralization is not a policy but is a part of the Institutional framework designed by the Constitution. By effect of year 2001 Reform of Title V of Italian Constitution the provision of social services is a function assigned exclusively to Regions. As far as social services are concerned, within the current institutional framework, local and regional authorities have the duty to provide for specific services for women victims of violence, while the Government has the opportunity to define the general framework to address policies to be implemented at both regional and local level. However, Central Government has the exclusive competence on the issue of security and safety of victims.

III. Conclusions and recommendations

233. PARA 104: With specific regard to the establishment of a NHRI, it should be recalled that for the first time the Government approved in early March 2011, the relevant Bill which has been also recently confirmed by the Senate and is currently under the Chamber of Deputies’ consideration.

234. PARA.104: As for the compilation of relevant legislation on gender-based violence under, for instance, a Unified Text, it should be considered that Act No. 66/96 already gathered all previous concerning sexual-related crimes, under the definition of sexual violence (Art. 609 bis). In order to be more comprehensive it envisages special aggravating circumstances in addition to the common aggravating circumstances. Over the years, as the complexity of the society so required, this has been supplemented by various legislative measures as the one on FGM.

235. While understanding that, formally speaking, a possible U.T. could be a stronger signal against perpetrators, this would not affect the current comprehensive legislative framework and the relating high protection system.

236. On a more specific note, Italian Authorities deem that the following recommendations should be re-considered according to more factual observations:

237. PARA.105: There is no regulatory gaps/legal vacuum as for child custody. In Italy, in addition to protection orders (removal of the abusive spouse from the home and places frequented), there are as for cases of domestic violence, other precautionary measures, such as banning of abode, pre-trial detention (Please see the annexed samples from the Ministry of Justice). There are no regulatory gaps. On the contrary the precautionary measures that

are usually issued, such as imprisonment, are even more restrictive of personal freedom from the obligations of protection relating to places frequented by the victim.

238. PARA.107: Besides recalling the relevant constitutional provisions, such as Arts.24-25, the quality of the defender is determined by the choice of the victim, the lawyer chooses the part, but the state pays. The State does not choose the lawyer.

239. PARA.111: Italy and in particular the Ministry of Education, University and Research have a long history in promoting the inclusion of non-Italian pupils and students in schools. The MIUR-Memo / Directorate General for School Orders No. 2 of 8 January 2012 openly pursues the two-fold aim of combining the maximum inclusion in a training offer of high quality, by taking into account the starting positions and the need for each student. The relevant Memo also provides information on reception and allocation of foreign students. Through the 30% quota for foreign students, it is achieved a balanced allocation of costs between classes, as well as the planned network agreements which avoid concentrations of enrollments of foreign students. The above Memo therefore represents a positive achievement of the long experience of Italy in terms of inclusion of pupils and foreign students (See the document of the Ministry of Education herewith attached).

240. PARA.114: To promote equal pay and equity, the Ministry of Labour and National Councillor have taken some measures. The Charter for equal opportunities and equality at work aims, inter alia, at committing companies to observing the principle of equal pay and recognition of career paths.

241. In terms of regulatory measures to tackle the gender pay gap, the Ministry is involved with the inspection activity in tandem with the activity carried out by the National Equality Councillor and believes that a commitment to women's employment can not be confined to the time of access, but must protect workers during their work-life, in order to overcome the differences of character which are the result of wage discrimination on the real side of his career. The issue could be addressed by the method of sector studies. It would, as has been suggested in the CNEL, essentially to promote analysis to identify trends in a few years, the wage differential male / female in the same qualifications and coaching. On this basis, in light of what is revealed, we should take positive action, with the goal of achieving the qualification of women's work and a more equitable pay. The company engaged in this business (certified university) could buy a title more in public procurement.

242. PARA.115: The legislative office of the Ministry of Justice is active on the adaptation of domestic law with Community law. So far it has undertaken the following initiatives:

- Inclusion in the Community Act 2011 of the Act empowers the Government to implement the Framework Decision 2001/220/JHA of the Council of 15 March 2001. This Directive relates to the standing of victims of crime in the criminal proceedings.
- active participation in the draft Directive of the European Parliament and Council n. 275/2011 in order to establish minimum standards regarding the rights of protection, assistance and protection of victims of crime (in the process of final approval).
- active participation in the draft Regulation of the European Parliament and Council n. 276/2011, aimed at establishing and strengthening the mutual recognition of the order of civil protection between member states (after the first reading).

243. PARA.116: With regard to the dissemination and promotion of gender-based culture in the field of human rights, equal opportunities, contrast to all forms of violence, discrimination, stereotypes or prejudices, the Department for Equal Opportunities implements, each year, an articulated communication plan in order to inform and increase

awareness in the public opinion of key issues relating to equal opportunities. In particular, as regards the issue of contrast to all forms of gender based violence, the following institutional campaigns have been realized or are ongoing: "1522 - It 's time to react", "No FGM- Nobody excluded", "I say NO to violence", "Against violence: Respect women Respect the world", "Stalking: when the attention becomes harassment" and "She is only foreigner. We are considering her a stranger".

244. PARA.118: Since 2009 the Department for Equal Opportunities periodically conducts campaigns to raise awareness of violence against women generally and against women from marginalized groups in particular. In the past four years several campaigns have been conducted, generally, ("Respect women respect the world"): on the information about the existence of the toll free number 1522 ("It's time to react – call 1522"); and on the awareness of the introduction of the crime of stalking ("Stalking: when the attention turns into persecution"). Thus we kindly ask to change the recommendation: "Conduct targeted sensitization campaigns, including with CSOs, to increase awareness on violence against women generally, and women from marginalized groups in particular" into: "Continue to conduct targeted sensitization campaigns, including with CSOs, to increase awareness on violence against women generally, and women from marginalized groups in particular".

245. PARA.120: During years 2011-2012 a total of 10 million Euros were specifically allocated to

246. Anti-violence centers and shelters, including the setting up of new centres (see observation to paragraph 64). We kindly ask to change the recommendation: "Take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters for the assistance and protection of women victims of violence" into "Continue to take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters" for the assistance and protection of women victims of violence".

247. PARA.124: Strengthen the capacity of ISTAT, including through the provision of consistent funding, to establish a system for regular and standardised data collection and analysis, disaggregated by relevant characteristics in order to understand the magnitude, trends and patterns of violence against women. PARA.125: Ensure that in collecting such information, ISTAT regularly collaborates with institutions and organizations already working to collect data on violence against women - including the police, courts and civil society. The goal should be the harmonisation of data collection guidelines, and the use of such information, in an effective way.
