

Written observations submitted by DIFFERENZA DONNA-NGO

For the attention of SR's Secretariat at the Special Procedures Branch of OHCHR, at the email: migrant@ohchr.org.

Differenza Donna (hereinafter DD) is a feminist organization of women based in Rome, Italy which since 1989 pursues the aim to fight, prevent and overcome all forms of violence against women. DD is founding partner of D.I.R.E-Italian National Network of Women's shelters.

Since 2010 DD is part of WAVE-Women Against Violence Europe, the European network of NGO's aiming to combat Gender Based Violence and promote women's rights. DD is also part, since 2015, of the Platform for Cooperation on Undocumented Migrants (PICUM).

DD was granted special consultative Status by ECOSOC in 2016 and is active on both a national and international level, running women's shelters and several help-desks which target survivors of all forms of GBV, including THB for sexual exploitation.

Since 1992, when the first Italian central-south shelter for women victims of gender violence was established in Rome, the "Anti-violence shelter of Rome's Province," DD has received more than 30.000 women of which 50% migrants and asylum seekers and more than 1000 women survivors of human trafficking.

Since 2013, through the activities carried out within the EU-funded project "GendeRIS: the gender dimension in anti-trafficking policies and prevention activities in Romania, Italy and Spain", DD cooperates with territorial commissions for international protection in order to strengthen the capacity of operators to detect indicators of trafficking and exploitation among asylum seekers.

Official definition of gender responsiveness. According to DD's methodology, based on a feminist perspective and developed from practices and interventions There based on years of **direct experience** and **working closely with migrant, asylum seeker and refugee women**, the Italian legislative and policy framework that regard immigration regulation **is still lacking of a general and systemic gender responsiveness and gender based perspective.**

First references to the need to implement gender sensitive mechanisms and procedures can be found in Legislative Decree 24/2014 which transposes EU36 / 2011 directive, but in any case the reference to gender is functional only to correlate condition of particular vulnerability to gender and justify the adoption of measures of protection.

Existing or forthcoming good practices or initiatives of gender-responsive migration legislation, policies or practices. All the advances of the legislation and practices promoted by organizations of the civil society are compromised by the current immigration and rejection policies.

For now it remains significant the coordination work between the organizations of the civil society of anti-trafficking in the implementation of the guidelines for identifying the victims of human trafficking of UNCHR.

Challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies

a. Sexual and Gender Based-Violence. In 2015 Istat updated data on VAW in Italy: total number of foreign women living in Italy who have suffered physical or sexual violence in their lifetime is similar to Italian women's (31,3% vs 31,5%). Forms of violence: Migrant and refugee women experience more

frequently physical violence (25,7% vs 19,6%), Italian women experience more often sexual violence (21,5% vs 16,2%); or more likely, sexual violence remains underreported among female migrant and asylum seekers.

Perpetrators: migrant women, in most cases (68.9%), are victims of violence performed by their current or previous partner and has begun in the country of origin. In 20%, violence is related to a relationship started in Italy.

Access to authorities and services: In 17.1% of cases, migrant women report violence by their partners (current or past), and more often turn to specialist centres (6.4%).

a) Law against GBV

- Law 154/2001: it introduces specific protection orders for women victims of GBV within civil and criminal proceedings.

- Law 38/2009: it introduces the crime of stalking (art. 612 bis c.p.) in the criminal code and special cautionary measures for GBV's victims.

- Law 119/2013: it modifies the criminal procedures code providing rights of information, legal assistance and participation to victims within the proceedings; it also provides special precautionary measures such as forced removal from familiar home in cases of injuries or threats and with the existence of risk for physical safety of members of the family (art. 384 bis c.p.p.). It provides measures of protection of women victims of GBV during their testimony even if they are adults and not minors.

- Legislative decree 24/2014: it establishes specific rules for THB victims implementing EU Directives 2011/36/UE. The act provides that TCs inform the administrative authority (Questore) if asylum seekers are identified as victims of trafficking. It lacks specific provisions regarding GBV prevention.

- Legislative decree 212/2015: it applies the Directive 2012/29/UE with regard to victim rights within criminal proceedings. In Italian criminal code it introduced norms related to the right of information given to victims before the criminal complaint. It also introduces the concept of "vulnerability" for victims of GBV in order to grant them the possibility to apply for protected testimony (art. 90 quarter c.p.p.).

Challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies.

Article 5 §6 Immigration Law: it establishes the permit of stay for humanitarian reasons. It has been the most common permit of stay requested for women without documents suffering from GBV (excluded THB) before the introduction of the specific permit of stay for victims of domestic violence (article 18 bis Immigration Law).

The permit of stay for humanitarian reason was repealed by the "Salvini Decree", law 132/2018.

Article 10 §4,5.6 Immigration Law, ruling the border refusal, establish that at the border asylum seekers' rights and humanitarian reasons prevail over the removal.

Article 10 bis Immigration Law, criminalizing irregular migration, increased the vulnerability of undocumented migrant women and limited their access to justice.

Article 13 Immigration Law, regulates the removal procedure. This article has been often applied to women without documents, even if victims of SGBV.

Article 14 Immigration Law, regulates the detention of migrants without documents who are about to be deported. The detention is seen as exceptional and residual measure, but in practice it is the sole measure applied also to undocumented women who seek for help to escape from a violent partner or who refer to police to file a complaint against him.

Article 14 ter Immigration Law, provided "assisted deportation programs". It does not ensure adequate protection to deported women at risk of re-trafficking or GBV in origin countries. Article 17 Immigration

Law, establishes a permit of stay for “justice reasons”. It has often been issued for undocumented migrant women reporting GBV before the introduction of article 18 bis Immigration law.

Article 18 Immigration Law: a foreigner on Italian territory who is in a situation of sexual exploitation characterized by violence and who faces danger to her/his safety as a consequence to attempt to escape, can be granted a special permit. In addition to this temporary permit, victims are integrated into a social integration and assistance program. This is a temporary permit of 6 months which can be renewed for one year or converted into a work or study permit. The provision aims to offer women victims of trafficking and sexual exploitation the possibility to escape from conditions of violence and slavery. One of the biggest issue related to the effective application of that norm is that victims of trafficking are without documents and when identified by police they are deported like other undocumented immigrants. Only in case where they decide to cooperate with the police, and decide to testify against the traffickers, they are able to obtain the special permit of residence, even if the norm provides the possibility to grant this special permit, even without triggering a criminal proceedings. As regards the number of residence permits issued to victims of THB, by the end of August 2016, a total of 494 permits had been issued under Article 18 of the Consolidated Immigration Act, of which 139 to Nigerian women. It is a very small amount in comparison with the number of Nigerians who arrived in Italy in 2016 and were refused international protection.

ART. 18 BIS Immigration Law: Migrant women have the possibility to apply for the permit to stay (it is meant for foreign victims of domestic violence) provided by art. 18 bis of the Immigration law introduced by the Law 119/2013. Art. 18 bis provides that the foreign victim of domestic violence in Italy can request a special permit to stay for humanitarian reasons. These are the conditions required to obtain the permit: 1) authorities have to know the existence of the situation of violence (such as family abuse and mistreatments, personal injury, kidnapping, sexual violence and stalking) or because a criminal proceedings has started or the situation of violence emerges during police operations; the permit is granted by the immigration authorities, upon consent of the public prosecutor who is overseeing the individual woman's case. One of the issue related to the concrete application of such norm is that it still puts the onus on the woman to actively report the abuse or violence to the authorities. In the majority of cases, these women fear to report the actions of their partners because they are afraid of being deported from Italy. We have also noticed that when women ask for the permit under art. 18 bis within the criminal procedure, then, it spreads the bias of the falsehood of the denounce considered it to be just an instrumental to obtain the permit.

Article 19 Immigration Law: it grants protection in case of persecution risk in the origin state which are not covered by asylum law. It is usually applied in case of GBV in origin State.

Article 22 §12 bis Immigration Law provides a permit of stay for labour exploitation of undocumented migrants. It is rarely applied because it assumes the previous criminal complaint. Articles 28-30 Immigration Law regulate the family unit for migrants. The provisions seriously limit the autonomy of women whose status is strictly dependent on the status of their spouses or parents. Migrant women who are granted permit of stay for family reunification, are at risk to suddenly become undocumented because the renewal procedure depends upon the will of their spouse or parent.

Article 31 Immigration Law provides a special and temporary permit of stay for undocumented parents of minors with special needs. In practice undocumented migrant women apply for such permit for avoiding to be separated from their children.

Access to international protection for asylum seeker women. Women do not receive complete and comprehensive information about the asylum system and the related procedures. Asylum seeker women are not granted of legal assistance since the beginning of the asylum assessment and the legal advisors they meet usually do not have GB persecutions expertise. Women pointed out that they were

not informed of the content and the aim of the interview before being interviewed by the TCs members. They usually received information for the first time directly from the interviewer.

Interpreters: All of the women interviewed within the project GAPS- Differenza Donna claimed not to have received information about the possibility to ask for a female interpreter or a female interviewer. A sole member of the TC interviewed all of them.

Refugee Status determination process: The refugee status determination process has been widely impacted by the spreading of the gender perspective thanks to the awareness raising efforts of UNHCR, active member of both NC and TCs. Gender specific forms of persecution and gender related persecution have progressively found recognition both as “acts which inflict severe pain and suffering” and as forms of persecution whether perpetrated by State or private actors (UNHCR, 2002). In Italy consequently we registered an increase of sensitiveness regarding the following gender based violence types: female genital mutilation, even if past FGM does not result in an automatic granting or refusal of the asylum request; Forced marriage, may amount to persecution or serious harm, in particular for the consequent behaviour of opposition, entitling to subsidiary protection; domestic violence, as a form of persecution, mainly entitles to humanitarian protection; honour crimes, may amount to persecution; trafficking, in particular related to Nigerian women, may amount to persecution and entitles women to refugee status because of the belonging of a particular social group. However, the denial rate remains very high: the recent case of 70 Nigerian women detained and most deported despite the lodging of an appeal against the asylum denial is a clear index of underestimation of the seriousness of Nigerian women conditions and the concrete 63 risk to suffer from re-trafficking which amounts to persecution. Forced abortion and sterilisation may amount to persecution. From the information collected in this project and during our experience of sheltering and legal assistance, it emerges that women are disproportionately identified as a “particular social group” to be granted international protection. The prevalent outcome of women’s asylum requests is humanitarian protection since they are considered as vulnerable subjects. In Italy, for a long time, TCs have given no reason for positive decisions and nowadays their reasoning remains much unelaborated. Negative decisions are accompanied with more articulated reasoning, although usually there is a lack of references to the criteria of credibility assessment applied to the concrete evaluated case. The arguments usually mentioned in the hearing outcome reproduce gender based stereotypes (the most common is that on motherhood “it is not credible that the applicant left her child behind”, but also based on sexist prejudices, for instance, in the case of women speaking about their experience of prostitution). Credibility is weakened also by the difficulties to framework events in time and space, ignoring that this difficulty is typical of people who suffered specific forms of violence and persecutions, such as gender based ones. The reasoning of the denials of refugee status often include not updated information of the Country of Origin (COI) which usually lack deep and independent analysis of women’s condition in the origin country.

Trafficking in human being for sexual, labor exploitation and for criminal activities. The contemporary management of reception, detention and removal of so-called irregular migrants and asylum seekers represents a very serious additional risk factor for THB survivors: due to a lack of organized, coordinated and stabled communication there is no systematic joint network in Italy which brings together all the actors involved in the migrant reception such as civil society and government institutions. The management of reception and accommodation of migrants and asylum-seekers, in fact, seems to be done on highly confused and inadequate grounds. In the past years there has been an enhancement of the reception system responding to accommodation emergencies due to the elevated number of migrants arriving in Italy. However, in the light of the recent update in the national migration law, the

government has actually cut off funds and reduced the number of accommodation structures. The Italian legislator provides almost no guidelines on the reception system set up and leaves the management of centres to different private firms with no particular skills and or qualifications in migration issues. In fact, call for bids on managing reception centres is won on the sole basis of the lowest economic offer, without adequate consideration of the quality of services and operators' skills/capacity. In a few reports compiled by different NGOs there is a courageous denouncement of the very poor reception conditions in the reception system but there is little mentioning of vulnerable people's conditions. To date, we have almost no data on how gender-based suffering women's (including those suffering THB) needs are met and little is known on their presence in the reception centres.

The reception and accommodation systems in Italy, lack gender-based sensitive approaches and services and are often isolated and located far away from the main towns. Many women have difficulties accessing accommodation, which exposes them to find alternative help making them vulnerable to violence and exploitation. Operators working in reception facilities very often lack gender-based and THB training.

Many victims of THB are accommodated in these reception centres and they point out the presence in these structures of traffickers, the lack of access to appropriate legal information, little access to health care and total lack of vocational training and employment opportunities.

Often women survivors of THB report being held in detention along with the same people responsible for their sexual exploitation. They are generally disoriented and hold no information about their rights to ask for asylum or access to protection due to their status as victims of human trafficking. DD notes that the detention condition exacerbates psychological symptoms in women victims of GBV and trafficking.

Over 80% of undocumented women who have contacted DD's helpdesk in the detention centre of Ponte Galeria (Rome), report to have suffered from trafficking or smuggling and have been exposed to sexual violence, servitude, torture, arbitrary detention, starvation and sexual exploitation during the journey escaping their country of origin. Once in Libya, many women declare to have been tortured, raped and sexually exploited. They refer to have been sold to different traffickers, held prisoners in ghettos and connection houses, where they suffer systematic sexual violence and exploitation perpetrated with the sole aim to total subjugation and annihilation of the victims. Once in Italy, they frequently refer to have been stopped by Italian police forces on streets while they are subject to sexual exploitation and brought to detention centres since undocumented and where they are at risk of being repatriated. Deportation to their countries of origin expose survivors of trafficking to an elevated risk of re-victimization and re-trafficking.

DD also highlights the lack of identification of survivors of THB **at the Italian borders**.

Moreover, many women and girls trafficked have been deported to Italy in light of the Dublin regulation and they have been directly brought to the Ponte Galeria detention centre for repatriation, facing secondary victimization, aggravating of their traumas and **re-trafficking**.

New trends of trafficking for sexual exploitation include **internal trafficking routes** within European countries: DD is cooperating with many organizations within EU Member States to collect information on women and girls who have been firstly identified as victims of THB in Italy, but then re-trafficked in other EU Member States, where they risk having their request for protection denied due to the lack of documentation identifying them as survivors of THB. Such condition and the increasing number of women and girls re-trafficked reveals the failure of the national protection system. Many women are involved in exploitation for criminal activities, but this is not recognised by authorities as indicator of victimization.