



Rights of the Child
in Italy

OMCT
OPERATING THE **SOS-TORTURE** NETWORK



Rights of the Child in Italy



The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

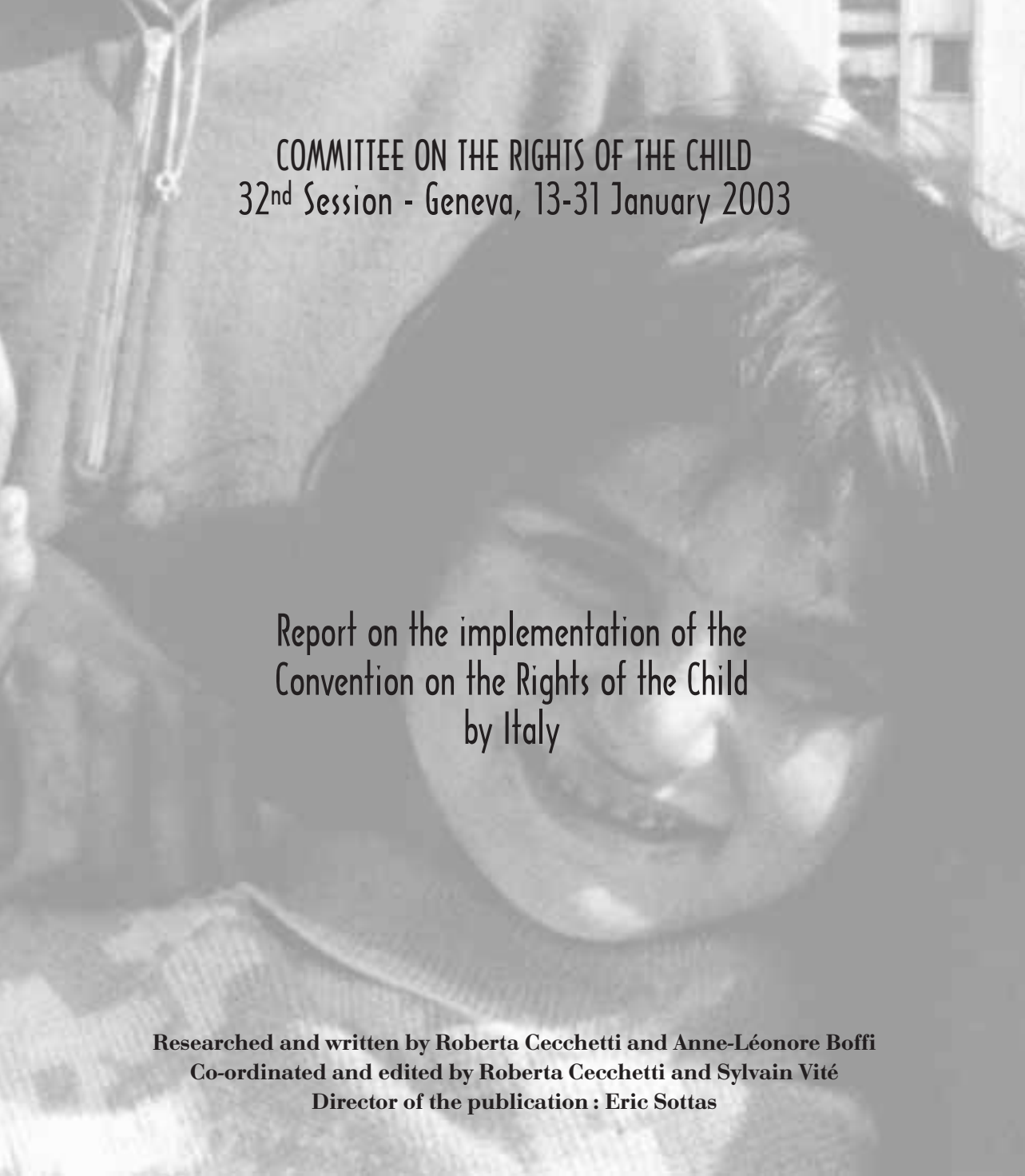
The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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Report on the implementation of the
Convention on the Rights of the Child
by Italy

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I. Introduction

The Italian Government has ratified the Convention on the Rights of the Child (hereafter the Convention) on 5 September 1991 and it came into force on 5 October of the same year. Both optional protocols to the Convention were also recently ratified in May 2002. Italy is also a party to other international instruments related to human rights, in particular to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At a regional level, Italy has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment.

OMCT welcomes the first periodic report submitted by the State of Italy to the Committee on the Rights of the Child (hereafter the Committee). In particular, OMCT notes with satisfaction the intention of the Italian Government to develop a national strategy to protect the rights of the child fo-

cusings especially on the need to improve the coordination between the various governmental entities, as well as between national, regional and municipal levels, and to adopt a more comprehensive dimension of the problem, including fighting against structural causes leading to violations of children's rights. Adoption of law n° 451/1997 has led to the setting up of various institutions and mechanisms for the protection and monitoring of the rights of the child in Italy, including in particular the National Documentation and Analysis Centre for Children and Adolescents; the Parliamentary Commission on Children, which approves a National Plan of Action; and the National Observatory on Children within the Department of Social Affairs.

Nevertheless, despite positive developments, OMCT notes with concern that several suggestions and recommendations of the Committee linked to Italy's initial report remain pertinent. In particular, Italian legislative provisions concerning the protection against torture and other cruel, inhuman or degrading treatment or punishment are

insufficient and do not contain a specific definition of torture. Ill-treatment by police and other public officials against children in detention have been reported as well as excessive use of force and denial of fundamental rights against demonstrators in the street or subsequently in custody. Physical and verbal abuse against Romani has been frequently denounced.

Indeed, discriminatory attitudes against some group of children, in particular immigrant and Roma children, persist preventing the creation of an environment favourable to their fullest possible integration into Italian society. Roma communities, for example, are still not offered the possibility of adequate housing and face serious difficulties in access to education as well as excessive delay in the processing of residence permit applications. Official statis-

tics show a pattern of discrimination relating to foreign children in the administration of juvenile justice with more foreign than Italian children sent to custodial facilities rather than benefiting from alternatives to detention. Recently, the Italian Government has endorsed a very restrictive approach on immigration giving rise to serious concerns in the face of an ongoing tide of illegal migrants landing on its shores.

Therefore, OMCT decided to submit an alternative report on Italy to the Committee, in which it focuses on specific areas that fall within the OMCT's mandate. The report will raise several concerns, sometimes regarding the information given by the Government, and will make a number of recommendations on how to improve children's rights in various situations.

II. Definition of the child

In accordance with article 1 of the Convention, which declares that “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”, article 2(1) of the Italian civil code establishes the age of majority at the attainment of 18 years¹.

According to article 84(1) of the civil code, minors under the age of 18 cannot enter into a marriage contract. However, before achieving the age of majority, a minor can be considered as “emancipated” at 16 years old if he obtains from the court an authorisation to get married. The court’s approval is issued after receiving confirmation of the child’s psychological maturity and sound motivations, and after hearing the Public Prosecutor, parents or guardian².

The “emancipated” minor is permitted to perform ordinary transactions. For transactions exceeding ordinary administration, the authorisation of the guardianship judge is required³. An emancipated minor may also engage in a commercial activity with the

court's consent⁴. In any event, the emancipated minor must be assisted by a curator. The latter may be either the spouse if aged over 18 or any other person appointed by the guardianship judge, preferably one of the parents⁵.

Act n° 345/99, implementing the EC Directive n° 33/1994, and Act n° 262/2000 establish the minimum age at which a person may be employed at the end of compulsory schooling, however not less than 15 years of age⁶. Nevertheless, Act n° 345/99 does not apply to children carrying out domestic work within the family environment

1 - Article 2(1): “La maggiore età è fissata al compimento del diciottesimo anno. Con la maggiore età si acquista la capacità di compiere tutti gli atti per i quali non sia stabilita una età diversa.”

2 - Article 84: “Il tribunale, su istanza dell’interessato, accertata la sua maturità psico-fisica e la fondatezza delle ragioni addotte, sentito il pubblico ministero, i genitori o il tutore, può con decreto emesso in camera di consiglio ammettere per gravi motivi al matrimonio chi abbia compiuto sedici anni”; and article 390: “Il minore è di diritto emancipato col matrimonio”.

3 - Article 394 of the civil code.

4 - Article 397 of the civil code.

5 - Article 392 of the civil code.

6 - Article 5 substituting article 3 of law n° 977/1967 states that: “L’età minima per l’ammissione al lavoro è fissata al momento in cui il minore ha concluso il periodo di istruzione obbligatoria e comunque non può essere inferiore ai 15 anni compiuti”.

or working in family-run businesses provided that the tasks performed are not prejudicial to the child⁷. The State report⁸ mentions the possibility for children at 14 years old to enter into agriculture, domestic work and light non-industrial work on condition that the professional activity is compatible with the protection of the minor's health and does not violate school obligations. Act n° 977 of 1967 and n° 345/99 introduced a special regulation to protect working minors, such as special medical certificates which guarantee their physical fitness for work, periodical medical check-ups, limits on working hours, and prohibi-

tion of night work. Finally, Act n° 148/2000 is intended to meet the obligations arising out of the ILO Convention 182 on the Worst Forms of Child Labour in the fight against the exploitation of minors.

Regarding the age of military recruitment, law n° 331/2000 allowed voluntary military recruitment of children under 18 years of age but not the participation of under-18s in armed conflict. The recent adoption of law n° 2/2001 prohibits both compulsory and voluntary recruitment of 17 years-old children⁹, bringing Italy in line with the "straight-18" position¹⁰.

7 - Article 4 of Act n° 345/99.

8 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.93(d).

9 - Coalition to stop the use of child soldiers, *Child Soldiers Global Report*, 2001.

10 - Italy ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on 9 May 2002 which establishes the obligations for State parties to ensure that persons who have not attained the age of 18 are not compulsorily recruited into their armed forces and not involved directly in hostilities.

III. Discrimination

OMCT believes that discrimination is one of the root causes of torture and other forms of ill-treatment and violence. Article 2 of the Convention asserts that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

3.1 Legal framework

The principle of equal treatment is reflected in the Italian Constitution through article 3 which establishes that: “all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions.” Furthermore, this article specifies that measures have to be taken by the Government “to remove those obstacles of an economic and social nature

which, really limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.”

However, the main legal framework for the implementation of the principle of non-discrimination is represented by the provisions contained in law n° 286 of 25 July 1998, entitled “Regulation of Immigration and Rules on the Condition of the Foreigner”¹¹. This law includes a detailed definition of discrimination and provides for a specific judicial civil action against discrimination.

According to its article 43(1), “discrimination shall be taken to mean any conduct which directly or indirectly involves distinction, exclusion, restriction or preference based on race, colour, lineage or descent, national or ethnic origin, religious belief or practice, or that has the purpose or effect of destroying or jeopardising the recognition, enjoyment or exercise of human rights and

¹¹ - Decreto Legislativo n° 286, *Testo Unico Delle Disposizioni Concernenti La Disciplina Dell' Immigrazione e Norme Sulla Condizione Dello Straniero*, 25 Luglio 1998.

fundamental freedoms in the political, economic, social and cultural spheres and in any other sector of public life”. Specific situations amounting to discrimination including access to public goods and services, to employment, accommodation, education, training and social care or welfare services are further described in article 43(2), which covers also specifically behaviour by police officials, including immigration authorities. The scope of these provisions is extended by article 43(3) that applies also to “acts of xenophobia, racism and discrimination with regard to Italian citizens, stateless persons and European Union citizens in Italy”. Finally, article 44 allows a person who feels discriminated against to present him/herself personally before the court to ask for an order for the termination of the discriminatory acts and provides for the setting up of observation centres offering information and legal assistance.

Protection against discrimination is also afforded by law n° 205/1993¹², integrating the Act of 1975 ratifying the UN Convention on the Elimination of All Forms of Racial

Discrimination, which provides for sanctions with prison sentences for those who “incite others to acts of violence on racial, ethnic, national or religious grounds, or who carry out such actions themselves” and for those who “disseminate on racial, ethnic, national or religious grounds or carry out such acts themselves”.¹³

Finally, mention should be made of the adoption of law n° 285 of 28 August 1997, entitled “Provisions on the Promotion of Rights and Opportunities for Children and Adolescents”,¹⁴ which calls for particular action to be taken in various sectors, and in particular towards Roma and immigrant children, and aims to overcome the unequal nation-wide conditions by allocating funds and developing programmes which will favour disadvantaged areas. The monitoring of the enforcement of this law has been entrusted to the National Research Centre for Children and Adolescents.¹⁵

While welcoming these important legislative developments, OMCT is deeply concerned by the fact that various sources report on the Government’s difficulty to implement anti-discrimination laws, particularly in the cases of immigrant and Roma children. In this context, the Council of Europe’s Advisory

12 - Legge n° 205/93 (legge Mancino), *Misure urgenti in materia di discriminazione razziale, etnica e religiosa*.

13 - Article 1.

14 - Legge 28 agosto 1997, n° 285, *Disposizioni per la promozione di diritti e di opportunità per l’infanzia e l’adolescenza*.

15 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.21(i).

Committee on the Framework Convention for the Protection of National Minorities has considered that “the Italian Government should review its anti-discrimination legislation in order to ensure that all acts of discriminations are outlawed and effective remedies and sanctions are available to all persons who suffer from discrimination, both by public authorities and private entities”.¹⁶ More precisely, the Committee recommends the development of “a more comprehensive body of provisions outlawing discrimination in a number of societal settings including employment, delivery of services, and housing”¹⁷. It further suggests “to review the legal remedies and the penalties prescribed in respect of discrimination (...)”¹⁸.

3.2 Situation

The Committee on the rights of the child recommended that the Italian Government take measures “to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children such as children living in poverty, children from the southern region, Roma children and foreign children and (...) to create an environment

favourable to their fullest possible integration into Italian society.”¹⁹

However, stereotypes and discriminatory attitudes against immigrant and Roma children are still widespread throughout the country reinforcing their marginalisation from mainstream society.

Of particular concern is the use of xenophobic language made in public statements by members of the right-wing political groups exploiting fears about immigration to gain political power. For example, Mr Umberto Bossi, leader of the Lega Nord and Minister for Reforms and Devolution since June 2001 within Mr Berlusconi’s cabinet, distributed flyers during the regional elections of April 2000 that stated: “If you don’t want Gypsies, Moroccans and delinquents in your house, be the master of your own home in a liveable city and vote Lega Nord”.²⁰ On 2 march 2001, in Brescia, another demonstration against illegal immigration was held by the Lega Nord.

16 - Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para.22.

17 - *Ibid.*

18 - *Ibid.*

19 - Concluding observations of the Committee on the Rights of the Child, 27 November 1995, CRC/C/15/Add.41, para.17.

20 - “Campland : Racial Segregation of Roma in Italy”, the European Roma Rights Centre, October 2000, p. 8.

Statements made by Mr Bossi the previous month called, among other, for the construction of a 260 km wall along Italy's border with Slovenia in order to keep out illegal immigrants.²¹ More recently, the BBC reported on the establishment of a vigilante patrol made up of a dozen members of the Lega Nord party whose task is to monitor the activities of immigrants and in particular illegal immigrants in the streets of Turin.²² The article states that "the patrols are certainly confrontational, even inflammatory. Their members wear uniforms, wave flags and shout provocative slogans through megaphones; and they deliberately target areas with many immigrant residents".²³

OMCT is deeply concerned by this worrying rising trend which has a negative impact on children. A survey conducted by the *Istituto Ricerche Economico-Sociali del Piemonte* of 1521 children revealed that 36% of respondents who fear open spaces (60% of all children) did so because of "drug addicts, Gypsies and Morrocans". 82% of respondents stated that their fears were based on information that they had received from their parents and teachers or otherwise indirectly. 92 children explained that they feared Gypsies because "they steal children".²⁴

Despite recommendations made by several UN Committees²⁵, the Roma communities are still not offered the possibility of adequate housing and face serious difficulties in the workplace, in access to health and social services as well as in legalising their status. Indeed, the European Roma Rights Centre (ERRC) reports that Roma are still being isolated from the rest of the population by being located into inhumane and degrading camps situated in marginalized areas where the infrastructure is very poor often lacking running water, toilets or electricity.²⁶ Immigrant Roma, including Roma who have been in Italy continuously for a number of years and their children born in

21 - "Concerns in Europe January – June 2001", Amnesty International.

22 - "Italy – from emigrant to immigrant state", Julian Pettifer, BBC News, 7 January 2002.

23 - *Ibid.*

24 - "Campland : Racial Segregation of Roma in Italy", the European Roma Rights Centre, October 2000, citing Miceli Renato, "Sicurezza e paura", Working Paper #127, October 1999, Torino : Istituto Ricerche Economico-Social del Piemonte, pp. 54-57.

25 - The Committee on Economic, Social and Cultural Rights has recommended to Italy to "step up its efforts to improve the situation of the Roma population, inter alia by replacing camps with low-cost houses; by legalizing the status of Roma immigrants; by setting up employment and educational programmes for parents; by giving support to Roma families with children at school; by providing better education for Roma children; and by strengthening and implementing anti-discrimination legislation, especially in the employment and housing sectors", E/C.12/1/Add.43, para. 23..

26 - ERRC's letter to the CERD, 29 June 2001.

Italy, face excessive delay in the processing of residence permit applications, and those who managed to legalise their status receive permits only for very limited periods of time.²⁷

Children greatly suffer from the discrimination imposed on the Roma communities. The transportation problems facing Roma children who live in camps remote from schools, and the precarious financial situation of many parents severely hinders their access to education resulting in an abnormally high level of absenteeism among Roma pupils.²⁸ It has been estimated that only 30-35% of the Roma school age population attend school.²⁹ Following testimonies collected by the ERRC, some parents don't send their children to school "because they don't have the means to buy decent clothes".³⁰ Finally, school attendance is hampered by the necessity for Roma children to participate in generating the family income often through begging or working at home.

When attending school, Romani children meet a number of difficulties "ranging from prejudice on the part of non-Romani parents who do not want their children attending schools with 'Gypsies', to bullying by non-

Romani classmates, to stereotyping by teachers and school administrators who perpetuate myths of 'genetically' lower intelligence levels among Romani children"³¹. Therefore, OMCT would like to recommend the Italian Government to implement training programmes to promote respect for children of Romani descent by teachers and other school officials, and monitor the behaviour of teachers in the classroom.

The Committee on Economic, Social and Cultural Rights has underlined the above-mentioned situation with great concern noting that " a large number of the Roma population live in camps lacking basic sanitary facilities on the outskirts of major Italian cities. The Roma on the whole live below the poverty line and are discriminated against, especially in the workplace, if and when they find work, and in the housing sector. Life in the camps has had a major negative impact on the Roma children, many of whom abandon primary and secondary schooling in order to look after their younger

27 - *Ibid.*

28 - Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para.55.

29 - A. Patrignani & R. Villé (eds.) "Romani youths : The pathway of juvenile justice", UNICRI publication series n° 59, Rome, 1998.

30 - "Campland : Racial Segregation of Roma in Italy", the European Roma Rights Centre, October 2000, p. 80.

31 - *Ibid.*, p. 82.

siblings or to go out begging in the streets in order to help increase their family income.”³²

OMCT is deeply concerned by the devastating effects of the negative representation of Roma which seems to be conveyed also by high governmental spheres. A recent Government publication, “Not Only Exploited or Violent: Children and Adolescents of the Year 2000: Report on the Condition of Infancy and Adolescence in Italy”, was released in June 2001 and describes Roma as “Gatherers”³³ comparing their way of making a living to that of “the Pygmies and Native Americans”³⁴, rather than to “our industrial society”³⁵. Later in the chapter, the report explains that “the Roma Gypsies did not immigrate to Italy seeking gainful employment in the labour force, but rather with the idea of remaining outside it, living by ‘gathering’. (...) the male children must go out with their mothers and sisters into their ‘natural’ environment, which is to say, in the midst of non-Gypsies,

to search for food or for the money to buy it. They beg, but there are also those who steal; inasmuch as they are ‘gatherers’ they feel no guilt from having deprived some non-Gypsy of the ownership of some object (...)”³⁶. OMCT is deeply concerned by the official position the Italian authorities have expressed in this publication based on a perception of Roma people which will not be conducive to their integration into mainstream society, and, on the contrary, will incite to further discrimination.

In this context, OMCT regrets the exclusion of Roma from the scope of law n° 482 “Norms concerning the protection of linguistic and historical minorities” which was adopted on 15 December 1999 and came into force in January 2000. This law makes provisions on the protection of the historical linguistic minorities of Italy and applies to the populations speaking Albanian, German, Catalan, Croatian, Greek, French, Franco-Provencal, Friulian, Ladin, Occitan, Sardinian and Slovenian. It allows various protective measures to be activated in specific territorial areas. Despite the attested historical presence of Roma in Italy (in 1994, the Romani population was estimated at between 80’000 and 120’000 people, of which between 25’000

32 - Concluding observations of 23 May 2000, E/C.12/Add.43, para.10..

33 - “Non Solo Sfruttati o Violenti : Bambini e Adolescenti del 2000 : Relazione sulla Condizione dell’Infanzia e dell’Adolescenza in Italia”, Presidenza del Consiglio dei Ministri, Osservatorio Nazionale per l’Infanzia, Centro Nazionale di Documentazione e Analisi per l’Infanzia e l’Adolescenza, June 2001, p. 231.

34 - *Ibid.*, pp. 226-227.

35 - *Ibid.*

36 - *Ibid.*, pp. 231-232.

and 35'000 do not have Italian citizenship³⁷), they have been excluded on the ground of this group's having no association with a given territory.³⁸

OMCT deeply regrets the absence in the State report of information on prejudice against children on ethnic or national grounds. OMCT urges the Committee to remind Italy of its obligations under article 2 of the Convention, and further emphasises the interdependent and indivisible nature of the CRC which requires State Parties to apply the principle of non discrimination to all the other articles of the Convention.

OMCT considers that the role of education is of crucial importance in overcoming the racist and xenophobic feelings existing in the Italian population against immigrants and Roma communities. This should not be limited to school education, but other forms of formal and informal education should be undertaken by the Government aiming to promote a culture of acceptance and tolerance at all levels of the community through the use of the mass media and public campaigns to combat stereotypes and racist behaviour or attitudes.

37 - A. Patrignani & R. Villé (eds.) "Rromani youths : The pathway of juvenile justice", UNICRI publication series n° 59, Rome, 1998.

38 - Council of Europe's Advisory Committee on the Framework Convention (ACFC) for the Protection of National Minorities, Opinion on Italy, 14 September 2001, para.11 and 16.

IV. Protection against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 37 (a) of the Convention provides for the protection of the child against torture or other cruel, inhuman or degrading treatment or punishment, including capital punishment or life imprisonment.

4.1 Legal framework

Article 27 of the Italian Constitution establishes that “punishment cannot consist in treatment contrary to human dignity and must aim at rehabilitating the condemned”. This principle is reaffirmed in article 1(1) of Act n° 354 of 26 July 1975 on “Prison rules and provisions on the enforcement of prison sentences and measures restricting freedom”, which provides that treatment in prison must be humane and must ensure respect for the dignity of the person. Article 61(9) of the criminal code punishes with more serious sentences the perpetrator who commits the offence with abuse of power or with violation of the duties inherent to its

own public function. Finally, article 608 of the penal code sanctions the public official who abuses his/her power against detainees and persons under arrest with an imprisonment sentence up to 30 months. Nevertheless, in the criminal code, there is no mention of “torture” as a specific crime punishable under the law.

In its concluding observations relating to Italy’s initial report in 1995, the Committee on the Rights of the Child had already specifically suggested that “the clear prevention and prohibition of torture or other cruel, inhuman or degrading treatment or punishment (...) be reflected in the national legislation”.³⁹

More recently, in 1999, the Committee against Torture recommended to the Italian Government to “proceed to incorporate into domestic law the crime of torture (...)” and to establish “an appropriate system of compensation for torture victims”.⁴⁰

39 - CRC/C/15/Add.41, para.20, 27 November 1995.

40 - A/54/44, para.169(a), 7 May 1999.

However, according to the current State Party report, the Italian legislative authorities don't seem to have implemented these recommendations yet. According to the Government report, the prevention and prohibition of such acts are "already present in the Italian legal system" and "are enshrined in the highest law of the land, namely the Constitution".⁴¹

While welcoming the rehabilitation dimension included in the concept of punishment, OMCT considers that Italian legislative provisions concerning the protection against torture and other cruel, inhuman or degrading treatment or punishment are insufficient and do not contain a specific definition of torture. OMCT recommends that this act be clearly established as a crime in Italy's penal code based on the definition set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴². In this regard, Italian legislation should moreover establish children as specific holders of the right to be protected against torture or other cruel, inhuman or degrading treatment or punishment by establishing more severe sentences against perpetrators acting against a child, setting up a proper system of complaint through which the child can effec-

tively ensure that his/her rights are being respected and carrying out appropriate measures to promote physical and psychological recovery as well as social reintegration of the child victim.

Furthermore, OMCT welcomes the Constitutional Court's Decision n° 168 of 27 April 1994 which has declared life imprisonment for children unconstitutional in light of articles 27 and 31(2)⁴³ of the Italian Constitution. However, OMCT deems it necessary that an express law be adopted formally abolishing this type of sentence.

Finally, capital punishment has been prohibited by Decree Law n° 244 of 20 August 1944. The death penalty has also been abolished for the criminal code applicable in war time through the adoption of Law n° 589/1994.

41 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.77(d)..

42 - Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as: "(...) any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

43 - Article 31(2) of the Constitution establishes that: "The Republic (...) protects maternity, infancy and youth (...)".

4.2 Ill-treatment by Police and other Public officials

Despite the ratification by Italy of the principal international instruments prohibiting torture and cruel, inhuman or degrading treatment or punishment, reports from different organisations mention several cases in which police officers and prison guards have treated minors/youths abusively.

The Council of Europe's Committee for the Prevention of Torture (CPT) published in December 1997 the findings of a two-week visit of inspection it carried out in 1995. The various places of detention CPT visited included the penal institution for minors of Nisida in Naples. The main findings include the following:

- A boy told the delegation that a few weeks before the visit several prison guards had beaten him, after attaching his hands to metal bars.⁴⁴

- Staff members informed the delegation that some guards believed in, and administered slaps to the child detainees convinced of their “educational” function⁴⁵.
- The delegation noticed that the detainees adopted a “strange attitude”⁴⁶ while talking separately with them: they avoided speaking about their relations either with the personnel or with their co-detainees, and spontaneously declared they had no knowledge of any violent incident between the detainees and the staff neither among themselves.
- Cases of self-mutilation have been reported and the CPT expressed its concern regarding the fact that no information relating to the treatment administered had been kept in the files⁴⁷ and that these cases often resulted in disciplinary sanctions such as placement in isolation sometimes for prolonged period.⁴⁸

OMCT would like to recall that these practices are in contradiction not only with article 37 of the Convention, but also with the provisions contained in the UN Rules for the Protection of Juveniles Deprived of their

44 - “Rapport au Gouvernement de l’Italie relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants en Italie du 22 octobre au 6 novembre 1995”, publié le 4 décembre 1997, CPT/Inf (97) 12, para.159.

45 - “giffes pédagogiques”, *Ibid.*, para.159.

46- “une attitude singulière”, *Ibid.*, para.160.

47 - *Ibid.*, para.168.

48 - *Ibid.*, para.169.

Liberty. Among these rules, OMCT wishes to emphasise:

- rule 19, which states that: “all reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood”;
- rule 67, according to which “all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”; furthermore, the Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights, notes that prolonged solitary confinement of the detained or imprisoned person may amount to torture⁴⁹.

In the Government communications sent to the CPT between February 1996 and June 1997 concerning the above-mentioned allegations of ill-treatment of children by the penal institution’s guards, the Italian authorities declared that, after investigation by a judge of surveillance, no evidence was found “of a climate of institutionalised violence or of ill-treatment”. They went on saying that the boy’s report of abuse was “established to be without foundation”.⁵⁰

Amnesty International reported in its 2002 report cases of ill-treatment and excessive use of force by law enforcement officers including against children/youths:

- On 23 February 2001, five youths, two Italian nationals and three Albanian immigrants, were taken to a police station in Pistoia following a verbal argument with a discotheque bouncer. The police officers (5) and the bouncer reportedly assaulted the youths, physically and verbally, resulting in one detainee needing hospital treatment to a broken nose, a burst ear-drum and a damaged testicle. The youths alleged they were slapped, punched and kicked until they were bleeding, that their heads were

49- Human Rights Committee, General Comment 20, HRI/GEN/1/Rev.2, p. 31.

50 - “A briefing for the UN Committee against Torture: Italy”, Amnesty International, May 1999, AI Index: EUR 30/02/99, p. 7.

knocked together and banged against a wall, that they were thrown to the floor- one of them landing against a glass door which shattered, injuring him, but that he was kicked as he lay on the floor groaning. None of them were allowed to call their relatives. The officers claimed they had intervened to stop a brawl between the youths and the bouncer inside the police station. The youths lodged a criminal complaint resulting in three officers receiving prison sentences (11 and 14 months) while two were committed for trial.⁵¹

- Demonstrators, including minors, in Brescia, Naples and Genoa have been subject to excessive use of force, including beatings with batons, arbitrary detention and denial of fundamental rights:⁵²

- During an anti-racism demonstration which took place in Brescia on 2 March 2001, demonstrators were allegedly subjected to gratuitous violence, assaults with truncheons and rifle butts, applied in particular to their backs, and continuous beatings although lying on the ground bleeding.⁵³
- During a demonstration held in Naples⁵⁴ on 17 March 2001, “non-violent protestors, including minors, [were] trapped in a square sealed off by the police, subjected to indiscriminate assaults by officers using rifle butts and truncheons, kicks, punches and stones (...)”.⁵⁵ Police officers reportedly received orders to look for injured demonstrators in hospitals.⁵⁶ Detainees in police station, including minors and a pregnant women⁵⁷, suffered severe ill-treatment by law enforcement officials ranging from being forced to kneel on the floor facing the wall for prolonged periods to being subject “to random and deliberate beatings with truncheons, slaps, kicks, punches and verbal insults frequently of an obscene, sexual nature”.⁵⁸ Intimate body searches were conducted in a degrading and humiliating way.

51 - Amnesty International Report 2002, AI Index: POL 10/001/2002.

52 - *Ibid.*

53 - “Italy : G8 Genoa policing operation of July 2001 A summary of concerns”, Amnesty International, November 2001, AI Index: EUR 30/012/2001, p. 4.

54 - Surrounding the Third Global Forum devoted to Fostering Democracy and Development through e-Government.

55 - “Italy : G8 Genoa policing operation of July 2001 A summary of concerns”, Amnesty International, November 2001, AI Index: EUR 30/012/2001, p. 5.

56 - “La dérive policière hante l’Italie”, Fabio Lo Verso, Le Courrier, 14 mai 2002.

57 - *Ibid.*

58 - “Italy : G8 Genoa policing operation of July 2001 A summary of concerns”, Amnesty International, November 2001, AI Index : EUR 30/012/2001, p. 5.

Fundamental rights denied included: prompt access to a lawyer, to adequate medical care and the right to inform relatives.⁵⁹ After more than one year of judicial investigation, the Public Prosecutor's office in Naples opened a criminal case against 105 police officers. On 26 April 2002, eight of them were arrested on charges of abduction and imprisonment and then discharged.⁶⁰

- The anti-globalisation demonstrations in Genoa on 20-21 July 2001 resulted in one protestor shot dead, hundreds of people injured and over 280 people detained. It has been reported that participants, including minors, were indiscriminately assaulted in the streets by law enforcement officers and numerous allegations were made concerning the practice by law enforcement and prison officers of cruel, inhumane and degrading treatment inside detention facilities, particularly in the Bolzaneto and Forte San Giuliano facilities⁶¹. Amnesty reports that detainees were slapped, kicked, punched and spat on, subjected to verbal abuse, sometimes of an obscene sexual nature, were deprived of food,

water and sleep for lengthy periods, made to line up with their legs apart and faces against the wall and forced to remain in this position for hours, and beaten, in particular on parts of their bodies already injured during arrest if they failed to maintain this position.⁶² Fundamental rights denied included: prompt notification to their families, prompt access to lawyers and to consular officials in the case of foreign nationals. A number of criminal investigations into the conduct of law enforcement and prison officers were opened by the Genoa Public Prosecutor's office, as well as administrative investigations by the Ministry of Interior. On 1 August 2001, a fact-finding investigation was opened by the Italian Parliament.⁶³

OMCT is also deeply concerned by the frequent allegations made by several organisations relating to the excessive use of force to which police while operating in the camps often subjects the Roma communities. Abusive raids by the police with no warning

59 - *Ibid.*

60 - "La dérive policière hante l'Italie", Fabio Lo Verso, Le Courrier, 14 mai 2002.

61 - "Italy : G8 Genoa policing operation of July 2001 A summary of concerns", Amnesty International, November 2001, AI Index : EUR 30/012/2001, pp. 11-12.

62 - *Ibid.*, p. 12.

63 - *Ibid.*, pp. 12-14.

or written authorisation are reportedly carried out leading on several occasions to a disproportionate show of force and to acts of brutality including insults with racist connotations.⁶⁴ Physical and verbal abuse against Romani also takes place in custody while police officers seem to use firearms abusively to intimidate Roma. Some examples include the following:

- On 10 January 1999, during a police raid in the Favorita Camp in Palermo, a 16 year old boy S.E. was stopped by four carabinieri as he was returning from a football game and was then beaten in public with truncheons. He was then taken to the carabinieri station and brought back a few hours later as the boy's uncle called the commanding officer of the local station. The latter requested the uncle not to bring the matter to the court.⁶⁵
- Natali Marolli, an 8 year old Romani girl, was shot and permanently mutilated by a carabinieri in May 1998 near Florence.

The girl and three accompanying adults were sitting in a car against which the police opened fire because it had not stopped when ordered to according to police declarations.⁶⁶ The police had apparently been waiting in ambush after having received a report that a “suspicious-looking car with Gypsies was in the neighbourhood”.⁶⁷

- Police raids have also led to mass expulsions of Romani from Italy: on 3 March 2000, 36 Roma living in the “Tor de Cenci” camp near Rome were deported to Bosnia. Among them were 19 year old Behara Omerovic, five months pregnant, and 16 year old Sanela Sejdivic with her daughter born only a few weeks earlier, in mid-February 2000.⁶⁸
- On 7 November 1998, a 17 year old boy F.S. along with two other Romani youths from the Borgosatolo camp at Brescia were transported to the police station on the grounds of attempted theft. They were detained in separate rooms and physically abused by the police officers in order to force them to confess to whom belonged a knife found in the car that had driven them to the station. All three

64 - See ACFC's Opinion on Italy adopted on 14 September 2001, para.38..

65 - “Campland : Racial Segregation of Roma in Italy”, the European Roma Rights Center, October 2000, pp. 25-26.

66 - *Ibid.*, p.34-35.

67 - *Ibid.*, citing the communication issued by the Montaiione Police following the incident, p. 34.

68 - Letter from the ERRC to the Committee on the Elimination of Racial Discrimination, 29 June 2001, p. 3.

denied having ever seen the knife and were then subjected to beating with slaps, punches and kicks. F.S. was dragged by the hair and his head was hit against the wall. One policeman told him that he would get some oil to set his hair on fire. F.S. told the police that he had a heart condition and the beating then stopped.⁶⁹

OMCT is seriously concerned by the fact that these incidents don't appear to be isolated cases, and by the impunity which seems to be enjoyed by the perpetrators as well as by the apparent lack of proper remedy provided to the victims.⁷⁰ This concern was also expressed by the Committee on the Elimination of Racial Discrimination which recommended to Italy "to ensure that the local authorities take more resolute action to prevent and punish racially-motivated acts of violence against Roma and other persons of foreign origin".⁷¹

Hence, OMCT would ask the Government of Italy to ensure that prosecutors and judges diligently investigate all allegations of torture and ill-treatment made by child victims, adopt adequate sanctions whenever necessary and guarantee that victims obtain fair and adequate compensation, including phys-

ical and psychological recovery and social reintegration. OMCT would also request the Government to elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. As prescribed in article 85 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, this should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child.

Finally, given the gravity of the allegations and the importance of article 37(a) of the CRC, OMCT deeply regrets that the report does not provide more information on the implementation of article 37, and in particular, on the *de facto* ill-treatment of children in the hands of public authorities. OMCT would therefore recommend that Italy present to the Committee a much more comprehensive picture of the occurrence of

69 - "Campland : Racial Segregation of Roma in Italy", the European Roma Rights Center, November 2000, pp. 37-38.

70 - See the letter from the ERRC to the Committee on the Elimination of Racial Discrimination, 29 June 2001.

71 - Concluding Observations of the Committee on the Elimination of Racial Discrimination, A/56/18 para.310, 8 August 2001.

torture and ill-treatment against children in Italy, and more specifically on the racially-motivated violence towards Roma and immigrants children, including measures taken to stop and prevent these acts from taking place. OMCT would also welcome more information on the measures taken by the

Italian Government in order to implement effective procedures for internal monitoring and disciplining of the behaviours of public officials, including sanctions for failure to provide detainees with prompt access to a lawyer, adequate medical care and the right to inform relatives.

V. Legal protection from other forms of violence

Article 19 of the Convention requires the protection of children "...from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

General protection against violence is afforded by article 31 of the Italian Constitution which states that: "the Republic protects maternity, infancy and

youth, promoting the institutions necessary thereto".

The criminal code provides for a series of crimes of violence and ill-treatment against the individual. Articles 575-593⁷² provide for the protection of the physical integrity: blows ("Percosse")⁷³ and bodily harm ("Lesione personale")⁷⁴ both carry a punishment, respectively up to 6 months imprisonment or a 600'000 lira fine for blows, and between 3 months to 3 years imprisonment for bodily harm. If the offence of bodily harm is committed against, inter alia, the ascendant or the descendant (article 585 and 577), the penalty is increased from one third to a half. Abusive use of discipline and correctional means by anybody exercising authority/care over an individual is punished

72 - Under chapter 1, *Dei Delitti contro la Vita E l'Incolumità Individuale*, within title 12, *Dei Delitti contro la Persone*.

73 - Article 581(1): "Chiunque percuote taluno, se dal fatto non deriva una malattia nel corpo o nella mente, è punito, a querela della persona offesa, con la reclusione fino a sei mesi o con la multa fino a lire seicentomila".

74 - Article 582(1): "Chiunque cagiona ad alcuno una lesione personale, dalla quale deriva una malattia nel corpo o nella mente, è punito con la reclusione da tre mesi a tre anni".

with imprisonment up to 6 months by article 571⁷⁵ located within the section of the criminal code concerning crimes against the family. If the abusive use of discipline and correctional means results in bodily harm, the sanctions which apply are those provided for this kind of offence. Ill-treatment of a minor up to 14 years old within the family or any other structure exercising authority and care over the person is prohibited by article 572⁷⁶ of the penal code. Such acts carry prison sentences ranging from one to twenty years depending on the gravity of the offence, including death of the victim.

OMCT is concerned by the lack of protection afforded to minors between 14 and 18 years old which are not covered by article 572 and recommend the Italian Government to fill in this legislative gap. Moreover, general provisions protecting individuals against violence do not entail aggravating circumstances in the case where the offence is committed against a minor defined as any person under 18 years of age. Therefore, OMCT would recommend the introduction of such changes in the Italian penal code accompanied with appropriate sanctions and would like to urge the Committee to ask the Italian Government if

children are protected against mental violence.

According to articles 361 and 362 of the criminal code, all civil servants informed of abuses are obliged to report the case, and non-reporting is punishable. This obligation extends to medical personnel under article 365 of the criminal code.

Parental use of corporal punishment has been prohibited by a judgement of the Supreme Court of Cassation in Rome in May 1996, which states that “...the use of violence for educational purposes can no longer be considered lawful”⁷⁷. OMCT deems it however necessary that an express law be adopted formally abolishing this type of punishment.

75 - Article 571: “Chiunque abusa dei mezzi di correzione o di disciplina in danno di una persona sottoposta alla sua autorità, o a lui affidata per ragione di educazione, istruzione, cura, vigilanza o custodia, ovvero per l'esercizio di una professione o di un'arte, è punito, se dal fatto deriva il pericolo di una malattia nel corpo o nella mente, con la reclusione fino a sei mesi. Se dal fatto deriva una lesione personale, si applicano le pene stabilite negli articoli 582 e 583, ridotte a un terzo; se ne deriva la morte, si applica la reclusione da tre a otto anni”.

76 - Article 572, *Maltrattamenti in famiglia o verso i fanciulli*: “Chiunque, (...) maltratta una persona della famiglia, o un minore degli anni quattordici, o una persona sottoposta alla sua autorità, o a lui affidata per ragione di educazione, istruzione, cura, vigilanza o custodia, o per l'esercizio di una professione o di un'arte, è punito con la reclusione da uno a cinque anni. Se dal fatto deriva una lesione personale grave, si applica la reclusione da quattro a otto anni; se ne deriva una lesione gravissima, la reclusione da sette a quindici anni; se ne deriva la morte, la reclusione da dodici a venti anni”.

77 - Cambria, Cass, sez. VI, 18 Marzo 1996, Foro It II 1996, 407.

Law n° 66 of 15 February 1996, amending the criminal code, has introduced specific provisions protecting children from sexual abuse. The new legislation has unified all types of sexual aggressions under one single crime, namely sexual assault, including in groups⁷⁸, and provides for progressive sanctions according to the age of the victim. Article 609bis of the penal code establishes a sanction of 5 to 10 years of imprisonment for anybody forcing another person to undertake or to be subjected to sexual acts by use of violence or threats or by abusing of his/her authority. This sanction is raised to 6-12 years if the offence is committed against a child up to 14 years old or a

minor up to 16 years old when the perpetrator is a parent or legal guardian, and to 7-14 years if the victim is 10 years old or less⁷⁹. Article 609Quater punishes also sexual acts carried out with a minor of less than 14 years old as well as with a minor of less than 16 years old when the perpetrator is the parent, legal guardian or anybody else to whom the minor is entrusted. Finally, “Corruzione di minorenni” (corruption of minors) is prohibited by article 609Quinquies establishing a 6 months to 3 years imprisonment sentence for anyone carrying out sexual acts in the presence of a minor of 14 years old with the intention of making the child a spectator of such acts.

78 - Article 609Octies of the penal code.

79 - Article 609Ter of the penal code.

VI. Child labour and exploitation

Article 32(1) of the Convention requires that: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”.

In Italy, the length of compulsory schooling has been raised from 8 to 10 years, and education is thus now compulsory up to the age of 16 instead of 14 years old.⁸⁰ Act n° 345/99, implementing the EC Directive n°33/1994, and Act n° 262/2000 establish the minimum age at which a person may be employed at the end of compulsory schooling, however not less than 15 years of age, in conformity with ILO Minimum Age Convention 138 ratified by Italy in July 1981. Act n° 148/2000 is intended to meet the obligations arising out of the ILO Convention 182 on the Worst Forms of Child Labour in the fight against the exploitation of minors, which Italy ratified on 6 June 2000.

Implementation of these laws, which are not fully respected in practice, raises serious concerns. Major breaches of rules on child labour include: non-observance of the minimum employment age; failure to provide mandatory periodical health check-ups; young people performing forbidden jobs; and violation of rules relating to rest periods, holidays and working time.⁸¹

Although, measuring the extent of child labour is made difficult by its connection to the underground clandestine economy, a survey, carried out by the CGIL trade union confederation and published in November 2000, estimates that child labour involves around 370'000 minors in Italy.⁸² This study excludes minors recruited for criminal activities, children working in the agricultural sector and seasonal workers, and is based on interviews of children between 11 and 14 years old. A more recent survey published in June 2002 by Italy's ISTAT statistical

80 - Law n° 9 of 20 January 1999.

81 - “Survey examines child labour”, Domenico Paparella and Vilma Rinolfi, Centro di Studi Economici Sociali e Sindicali, European Industrial Relations Observatory on-line, 3 July 2002.

82 - “Child labour in Italy analysed”, Marco Trentini, IRES Lombardia, European Industrial Relations Observatory on-line, 28 December 2000.

institute indicates that there are some 144'285 children aged between 7 and 14 who work (i.e. 3.1% of all children of that age), including around 31'500 (i.e. 0.66% of all children of that age) who are subject to exploitation (i.e. children who carry out activities which might be dangerous, strenuous, or not compatible with leisure and educational activities). Of the 31'500 working children, 12'300 perform a job on a continual basis while 19'200 carry out odd jobs.⁸³ The survey was based on interviews of young people between 15 and 18 years old.

It has to be clearly stated that working children are not only a phenomenon of socio-economically disadvantaged southern regions, but also of the richer areas of the Centre-North of the country. The CGIL survey has found that 60% of the total

370'000 estimated child workers are located in southern Italy compared to 40% for the north of the country.⁸⁴ According to ISTAT, “generic”⁸⁵ child labour is more common in the North-East of Italy and less so in the South, while child exploitation has an even distribution all over Italy.⁸⁶

Furthermore, child labour is not essentially due to economic reasons, but also to cultural attitudes and to the child social environment. Although child labour is a mean to increase the income of economically poor families –and this trend was underlined by the ISTAT survey–, it is not enough to explain a phenomenon whose nature is much more complex. The CGIL survey points out the tendency in many families to value work more than education, which may be viewed as ineffective in teaching one to survive beyond the school years compared to work considered as providing higher satisfaction. Numerous minors view work as a mean to satisfy their needs through obtaining money and small family-run enterprises tend to consider child labour as a resource which facilitates their operations.⁸⁷ Other key factors pointed out by ISTAT include: the age of the child (the phenomenon increases as age increases and an early start to child labour tends to mean that the child

83 - “Survey examines child labour”, Domenico Paparella and Vilma Rinolfi, Centro di Studi Economici Sociali e Sindicali, European Industrial Relations Observatory online, 3 July 2002.

84 - “Child labour in Italy analysed”, Marco Trentini, IRES Lombardia, European Industrial Relations Observatory online, 28 December 2000.

85 - By opposition to genuine child labour exploitation, “generic” child labour refers to all economic activities performed by children.

86 - “Survey examines child labour”, Domenico Paparella and Vilma Rinolfi, Centro di Studi Economici Sociali e Sindicali, European Industrial Relations Observatory online, 3 July 2002.

87 - “Child labour in Italy analysed”, Marco Trentini, IRES Lombardia, European Industrial Relations Observatory online, 28 December 2000.

involved will continue to work), geographical factors (“generic” child labour, in opposition with more serious exploitation, increase as job opportunities increase in the area where the child lives); the sector where the father works, especially the agricultural and hotel sectors; finally, the educational level of the householder.

One of the findings of the CGIL survey is that child labour can take a variety of forms. Still, jobs in commerce are the most widespread, especially food retailing, followed by crafts and the construction industry.⁸⁹ The agricultural sector is also highly involved in the use of child labour but was not covered by the survey. ISTAT indicates that help with family activities is the most common type of work reported (50% of cases), followed by seasonal work (usually for no more than three months per year – 31.9%) and more strenuous work (17.5%). Working activities falling within the latter category are usually performed on a continual basis, with the children involved very often working every day (81%) or for more than four hours a day (85%).

CGIL publication reveals that school dropout in relation to child labour depends on the kind of employment relationship: chil-

dren who work on a continuous basis tend to abandon school, while children who work on a casual basis tend to continue their studies, although absenteeism and repeat years put the child at a high risk of educational failure. ISTAT indicates that 20.5% of children who work before the age of 15 do poorly at school.

Child workers face a precarious future: their early insertion in low-skilled jobs on the labour market and the lack of opportunities for professional development for such minors can result, once adults, in their marginalization in the weak segments of the labour force. Moreover, work impedes their socialisation thus reinforcing the risk that they will later be marginalized from society.⁹⁰

Working conditions of minors vary a lot; it could be generally said that children from middle class families work with their parents in the family enterprise, while working class children mostly work for other people. In the first case, there is a condition that can present a certain kind of positive aspect as there is a relative socialisation of this type

88 - *Ibid.*

89 - “Survey examines child labour”, Domenico Paparella and Vilma Rinolfi, Centro di Studi Economici Sociali e Sindicali, European Industrial Relations Observatory on-line, 3 July 2002.

90 - “Child labour in Italy analysed”, Marco Trentini, IRES Lombardia, European Industrial Relations Observatory on-line, 23 December 2000.

of work; whereas the second class determines a situation without institutional checks and ethical restraints that can lead to the real exploitation of child labour.⁹¹

The use of children in organised crime by groups such as the Mafia is of special concern. It has been reported that the Mafia has set up a “school” for teenage killers in southern Sicily near Gela where children as young as 11 years old are taught to shoot, assemble weapons and become expert scooter riders in order to take part in hit and run attacks on designated individuals.⁹² They are trained to kill while still legally minors, and therefore cannot be punished as adults: they are known in Italy as “baby killers” and are exploited as accomplices to adults in crime.⁹³ According to the chief public prosecutor of Caltanissetta in central Sicily, the “school” has become “an alternative to compulsory state education”.⁹⁴

Concerning foreign minors, there are three immigrant communities where child work is more likely to be exploited⁹⁵:

- Chinese community: the largest communities are based in the regions of Latium, Lombardy, Tuscany and Piedmont. In Italy, nearly all of these immigrants, adults and children alike, work in restaurants and in the manufacturing and packaging of leather products. The children, illegally engaged in these activities, work after school, and their earnings help in the upkeep of the household. However, some families, including their children, end up in bonded labour as their trip from China is often organised by a Chinese racket who then exploit them in Italy until the full debt has been repaid.
- Moroccan community: the age of Moroccan children, predominantly males, ranges from 8 to 16 years. They can be found working in front of supermarkets, churches and cinemas, where they sell tissues and cigarettes lighters in order to help their families, which in many cases are still living in Morocco. These children are often under the care of a relative or acquaintance and

91 - “Children who work in Europe : From exploitation to participation”, Roberta Cecchetti, European Forum for Child Welfare, June 1998, p. 97.

92 - “Mafia sets up crime academy to train child assassins”, P. Willan, Guardian Weekly, 16 August 1999.

93 - “The Mafia’s baby killers”, D. Willey, BBC News, 29 September 1999.

94 - “Mafia sets up crime academy to train child assassins”, P. Willan, Guardian Weekly, 16 August 1999.

95 - “Children who work in Europe : From exploitation to participation”, Roberta Cecchetti, European Forum for Child Welfare, June 1998, pp. 96 and 98.

sometimes end up in criminal rings run by other Moroccans and Italians.

- Roma community: begging is considered a job and children help their mothers in this activity. Girls between the ages of 8 and 15, along with adult women, sell flowers, which are bought from wholesalers and sold in restaurants in the evening. Minors sometimes break into apartments. Previously, adults carried out burglaries, but children below the age of 14, who are too young to be tried as criminals, are increasingly committing these crimes. In addition, many Roma children are trafficked to Italy from former Yugoslavia to work as forced labourers in gangs where they are trained and then sold into crime rings in large cities.

Among other initiatives, OMCT welcomes the recently collected quantitative and qualitative data on child labour and the adoption of a Charter of Pledges by the Government and social partners in April 1998 which aims to safeguard the rights of children and to eliminate their economic exploitation through the following measures: raising the school-leaving age (which was done via adoption of law n° 9/99) and drawing up schemes to encourage the return to school

of children who have abandoned their studies; increasing repressive action against clandestine employment and the introduction of sanctions against firms which use under-age labour (both in Italy and abroad); and economic support for poor families.⁹⁶

However, OMCT would suggest that the Italian Government provide additional information regarding the design and implementation of future policies based on the relatively detailed recent picture of child labour in Italy given by ISTAT data. OMCT would further like to suggest that the improvement of State mechanisms of child labour control be accompanied by special policies targeting the families most at risk in the South as well as in the North of the country, including economic support and awareness raising, and by giving more attention towards professional training as a mean of reducing the risk of the marginalisation of working children in the lower segments of the labour market later. Finally, OMCT would like to encourage the Government to initiate a similar collection of data relating this time to foreign nationals and migrant working children as these children run a particular risk of being

96 - "Child labour in Italy analysed", Marco Trentini, IRES Lombardia, European Industrial Relations Observatory online, 23 December 2000.

exploited in the Italian underground economy.

Finally, concerning the exploitation of children in organised crime, Italy's Government has recognised the problem in its report to the Committee and has also underlined the lack of penal protection af-

forded to these children. At present, the only relevant criminal code articles punish the offence of abetting someone to commit a crime by use of violence or threats⁹⁷. Therefore, OMCT supports Italy's intention to urgently establish this practice as an autonomous crime in the national legislation accompanied with appropriate sanctions.⁹⁸

VII. Unaccompanied migrant children⁹⁹ and child trafficking

The situation of these categories of children will be considered simultaneously in this report given that the realities which they have to face are closely interlinked. For example, special focus needs to be dedicated to unaccompanied children given the vulnerable situation in which they find themselves (no

family environment considered as a major protective tool) which places them at particular risk of exploitation, such as sexual exploitation, involvement in unlawful activities and forced labour, including begging. Moreover, although some minors enter the Italian territory by their own means, the child may also have been victim of trafficking in the first place and smuggled to Italy.

According to article 20 of the Convention, it becomes the responsibility of the State within the jurisdiction of which the child comes under to guarantee the basic rights of the child in the absence of the minor's natural family. Article 22, relating to the special protection of child refugees/children

97 - Articles 610 *Violenza privata* and 611 *Violenza o minaccia per costringere a commettere un reato*.

98 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.336.

99 - UNHCR refers to this category of children as "Separated children" and gives the following definition: "children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others (...) may be living with extended family members. (...) Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation", Separated Children in Europe Programme, Statement of Good Practice, UNHCR and Save the Children Alliance in Europe, October 2000.

seeking refuge, states that: “(...) In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment (...)”. In addition, article 19 requires the protection of children “...from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. Finally, articles 32, 34, 35 and 36 further obliges State parties to protect the child against all forms of exploitation, including sexual exploitation and to prevent trafficking in children for any purpose.

7.1 Legal framework

Italian legislation provides the child with extensive protection against all forms of sexual exploitation, including through trafficking.¹⁰⁰ Adoption of law n° 269/98¹⁰¹, amending provisions of the criminal code, covers child prostitution, possession, dissemination and production of child pornog-

raphy, trafficking for sexual purposes and sex tourism. Moreover, provisions relating to CSEC crimes also apply “when the offence is committed abroad by an Italian citizen or where an Italian citizen is the victim, or by a foreign citizen with the assistance of an Italian citizen. In the latter case, the foreign citizen is punishable when the offence attracts a penalty of imprisonment of not less than five years and there is a request from the Minister of Justice”¹⁰².

Child trafficking “to engage them in unlawful activities so as to promote their exploitation”¹⁰³ is also punishable under law n° 286/98 in which it is described as an aggravating circumstance to the offence of illegal introduction of aliens in Italy. An innovative approach to combat this crime has been laid down in article 18(1) of law n° 286/1998 which opts towards a more social perspective of the problem. It provides for the issuance by the Chief of police of a residence permit in the case of victims of trafficking for the purpose of sexual

100 - Italy has ratified the Optional protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 9 May 2002, but has only signed the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children on 12 December 2000.

101 - See articles 2-5, 9-10 and 16 of law n° 269 of 3 August 1998, “Law against the Exploitation of Prostitution, Pornography and Sexual Tourism to the Detriment of Minors: the New Forms of Slavery”.

102 - Article 604 of the criminal code.

103 - Article 12 (3) of law n° 286/1998.

exploitation in order to allow foreigners to remove themselves from the violence and the ties of the criminal organisation and take part in a care and social integration programme. The permit is valid for six months and may be renewed for one year or for a longer period if required for legal reasons.¹⁰⁴ It allows access to relief services and studies as well as employment subject to minimum age limits. The permit may be extended or renewed for the duration of the working relationship or converted to a study residence permit.¹⁰⁵ Furthermore, the victims who collaborate with law enforcement officials by denouncing or testifying against their abusers shall be protected by the State and shall be placed on equal footing with those who collaborate in trials against criminal mafia-like organisations.¹⁰⁶

Nevertheless, as acknowledged by the State report¹⁰⁷, loopholes in criminal protection exist with regard to several forms of exploitation: at first, the involvement of minors in unlawful activities for the profit of adult criminals is not yet established as an autonomous crime in the national legislation; at present, the only relevant criminal code articles punish the offence of abetting someone to commit a crime by use of violence or threats.¹⁰⁸ Then, only the child up to 14 years old is legally protected from being exploited in begging rings as stated in article 671 of the criminal code.¹⁰⁹ Therefore, OMCT recommends the Italian Government to fill in the legislative gaps concerning the protection of the above-mentioned forms of exploitation and to introduce appropriate sanctions in particular aggravated penalties for those who commit these crimes towards a child defined as any persons under the age of 18 years old.

Concerning more specifically unaccompanied foreign minors, the Italian legal situation has evolved from a situation characterised by the lack of specific legal framework dealing with this issue (indeed the “Martelli Law” n° 39/90 was the first Italian law on the status of Aliens and did not address this phenomenon specifically)

104 - Article 18 (4) of law n° 286/1998.

105 - Article 18 (5) of law n° 286/1998.

106 - Activity Report 1998-2000, Tampep Italy citing Decree of 8 March 1999 modifying article 600 of the Criminal Code.

107 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, paras.333 and 336.

108 - Articles 610 *Violenza privata* and 611 *Violenza o minaccia per costringere a commettere un reato*.

109 - Article 671 states: “Chiunque si vale, per mendicare, di una persona minore degli anni quattordici o, comunque, non imputabile, la quale sia sottoposta alla sua autorità o affidata alla sua custodia o vigilanza, ovvero permette che tale persona mendichi, o che altri se ne valga per mendicare, è punito con l’arresto da tre mesi a un anno”.

towards introduction of reforms resulting in law n° 286/1998¹¹⁰ which contains specific provisions regarding minor aliens. Furthermore, the non-accompanied foreign child is legally treated as a non-accompanied Italian child and is thus covered by the provisions of law n° 184/1993.¹¹¹

The case of a child who finds himself *de facto* on the Italian territory must be immediately reported by the border authorities to the Commission for International Adoptions in order to contact the minor's country of origin¹¹², and to the Juvenile Court enjoying territorial jurisdiction over the place in which the minor was found, which may adopt any or all temporary measures in the interest of the minor.¹¹³ Indeed, according to article 403 of the civil code¹¹⁴, abandoned minors have the right to be immediately accommodated in a safe place until final measures may be taken for their protection. Final measures include foster placement or placement in a welfare institution or adoption.¹¹⁵ According to articles 19 (2) and 31 (4) of law n° 286/1998, the minor can not be subject to deportation, except for motives of public order and State security; the decision can only be taken by the Juvenile Court at the request of the head of the police administration.

Furthermore, law n° 286/1998 provides the unaccompanied minor, including those staying illegally in Italy, with access to health-care, including urgent or essential hospital treatment, continuous treatment for sickness or accident and preventative medicine programmes as well as access to education, which the law encourages to be based on an inter-cultural approach aiming at the integration of foreign children.¹¹⁶

The general rule does not allow for the entrance of the natural parent for reunification with the child who has not legally entered Italy. However, an exception to this rule is provided by article 31 (3) of law n° 286/1998 which states that “the Juvenile court for serious reasons relating to the psy-

110 - Decreto Legislativo n° 286, *Testo Unico Delle Disposizioni Concernenti La Disciplina Dell' Immigrazione e Norme Sulla Condizione Dello Straniero*, 25 Luglio 1998.

111 - Article 37 bis states : “Al minore straniero che si trova nello Stato in situazione di abbandono si applica la legge italiana in materia di adozione, di affidamento e di provvedimenti necessari in caso di urgenza”.

112 - Article 33 (3) of Law 184/1983.

113 - Article 33 (4) of Law 184/1983.

114 - Article 403 of the civil code states: “Quando il minore è moralmente o materialmente abbandonato o è allevato in locali insalubri o pericolosi, oppure da persone per negligenza, immoralità, ignoranza o per altri motivi incapaci di provvedere all'educazione di lui, la pubblica autorità, a mezzo degli organi di protezione dell'infanzia, lo colloca in luogo sicuro, sino a quando si possa provvedere in modo definitivo alla sua protezione”.

115 - Article 2 of Law 184/1983.

116 - Articles 35 (3) and 38.

cho-physical development of the child and bearing in mind the age and conditions of health of the minor in Italian territory may authorise entry or stay for a family member for a fixed term albeit in derogation of the provisions of this law”.

While welcoming the evolution relating to the legal protection of unaccompanied minors, OMCT would like to mention several points of concern reported by other organisations. According to IOM, “many reception centres are unable to respond to the demand for services and are often forced to invite minors to come back later or worse, to simply leave them to their own devices after having carried out the identification procedures”;¹¹⁷

as a result, the child is subject to precarious conditions of living reinforcing its vulnerability and thus becomes an easy prey for exploiters. The unpreparedness of the Italian government in the face of the high influx of immigrants landing on its shores is further revealed by the state of emergency¹¹⁸ which was declared in March 2002 following the arrival in Sicily of 928 persons, including 361 children, mainly Iraqi Kurds.¹¹⁹ In this particular case, the immigrants were moved to the Italian mainland where they were housed in a temporary camp in the city of Bari.¹²⁰ The State report admits that the system of assistance remains full of lacunae and that treatment differs depending on regions.¹²¹ Indeed, there are no harmonised or coordinated regulations on the application of article 40 of law n° 286/1998 which places on the Communes the primary role in the reception of incoming foreigners. Each municipality sets up its own arrangements, and in practice most assistance is provided by local NGOs under cooperation agreements.¹²²

Another point of concern relates to the fact that, while deportation of children is prohibited, except for motives of public order and security of the State, it is often replaced by assisted repatriation.¹²³ As acknowledged

117 - “Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union: Italy”, IOM, May 2001, p. 131.

118 - This measure allows extra funds to be released and gives local authorities, notably police, increased powers to deal with the crisis. Police can make quick decisions over the handling of immigrants and expedite asylum requests and expulsion procedures if required.

119 - see UNHCR world news, “Italian Government declares nationwide state of emergency”, 20 March 2002 and “Concern over Italy’s wide ‘emergency rule’ against illegal migrants”, 21 March 2002.

120 - BBC News, “Italy declares migrant emergency”, 20 March 2002.

121 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.222.

122 - “Study on the legal framework and administrative practices in the Member States of the European Communities regarding reception conditions for persons seeking international protection, Country profile: Italy”, DG Justice and Home Affairs, European Commission, 2001, p. 12.

123 - “Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union: Italy”, IOM, May 2001, p. 128.

in the State report¹²⁴, the criteria and the solutions vary according to the discretion of the Juvenile courts: some judges believe that repatriation and reinsertion into the family are indispensable and others view this solution as the last resort. Therefore, the establishment of a co-ordinating structure setting the minimum standards for a uniform policy in favour of the child, based primarily on “the best interest of the child”¹²⁵, is crucially needed to overcome these differences in interpretation.

In the light of the above-mentioned problems, OMCT welcomes the establishment within the Department of Social Affairs of a Committee for the protection of foreign children¹²⁶ in charge of monitoring the arrangements made for the stay of the foreign minors temporarily admitted in Italy and co-ordinating the activities of the administrations concerned. The Committee’s responsibilities have been extended to include issues of reception, assistance and assisted repatriation of alien unaccompanied minors.¹²⁷ However, OMCT would suggest to the Committee to request more information from the Italian Government concerning the clear separation of roles between the Committee for the protection of foreign minors, the Juvenile courts and the local social

services as to avoid conflict of competences between these different bodies.

OMCT is deeply concerned by the very tough line on immigration endorsed by the Italian Government and illustrated by the recent adoption of law n° 189 of 30 July 2002 as well as by the sharp increase (about 30%)¹²⁹ in the expulsions of asylum seekers from Italy since Mr Berlusconi’s conservative coalition came to power in June 2001. Key points of the new law include¹³⁰:

- all foreigners coming from countries outside the EU will have to provide their fingerprints for identification purposes when applying for a residence permit or its renewal;
- expelled immigrants who return illegally to Italy commit a crime punishable by imprisonment;

124 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add. 13, para.222.

125 - Article 3 of the Convention on the Rights of the Child.

126 - Article 33 of law 286/1998 provides for the establishment of a *Comitato per i minori stranieri*.

127 - See Legislative Decree n° 113 of 13 April 1999 and Decree n° 535 of 9 December 1999.

128 - Legge 30 Luglio 2002 n° 189, *Modifica Alla Normativa In Materia Di Immigrazione E Di Asilo*.

129 - “Italy arrests crew of migrant ship”, BBC News, 22 March 2002.

130 - “Immigrazione, la legge Bossi-Fini punto per punto”, 4 giugno 2002, La Repubblica.

- undocumented migrants can be kept in detention centres for 60 days in order to establish their identity resulting in subsequent expulsion; if the identity cannot be established, they are set free but ordered to leave the country within three days;

In light of this new legislation, OMCT would welcome some clarifications by the Italian Government concerning the treatment of children within these new procedures and the safeguarding of their rights, in particular concerning the existence of specific provisions for the processing of asylum claims submitted by unaccompanied migrant children.

7.2 Situation

The presence of unaccompanied minor aliens is not a new phenomenon in Italy, but it has taken on new dimensions since the 2nd half of the 80s: from being linked to movement of minors fleeing conflict situa-

tions, it has moved towards migratory flux of minors in search of work that would allow them to earn income for their families back home (in particular from the Maghreb). This trend has been confirmed by the massive influx of minors from the Balkans (especially Albania) in the 1990s.¹³¹

Migrants enter Italy on boats almost all using smugglers who often transport passengers in unsafe vessels. Following the 1999 large-scale influx of ethnic Albanians and Roma from Kosovo, recent years have seen thousands of new boat migrants from Iraq, Turkey, Sri Lanka, Pakistan and North Africa.¹³² Main routes include the Otranto channel, between Puglia's southern coast and Albania, or along the Calabrian coast southwards, or the coast of Abruzzo northwards, or along the eastern Adriatic coast northwards.¹³³

Data collected by IOM suggest that most alien minors in Italy are male (80%) mainly coming from Albania, Romania and the Maghreb, in particular Morocco, and tend to be close of the age of majority (85% are between 15 and 18 years old), although in recent times, even younger migrants have entered Italy, especially from Albania¹³⁴. It is often reported that parents accept, some-

131 - "Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union: Italy", IOM, May 2001, pp. 121-122.

132 - World Refugee Survey 2002, Country report : Italy, USCR.

133 - Ecpat database, www.ecpat.net

134 - "Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union: Italy", IOM, May 2001, p. 124.

times encourage, the migration of their child as a way to generate income for the entire family.¹³⁵ Most of these minors expect to work and rapidly earn enough money to allow them to return home after a few years and schooling is therefore considered as a waste of time.¹³⁶

Because of the pressure of family expectations placing an important responsibility on the child in generating income he could send back home and because of his/her vulnerable condition as new arrival in Italy, the unaccompanied child faces particular risk of being subjected to violence and exploitation by adult criminals, often fellow nationals to which they turn to seek help. The child is moreover at the mercy of the gangs that transported him/her to Italy and is often indebted after borrowing money to pay for the speedboat crossing. Once in Italy, the child is then forced to get involved in begging rings or forced labour as well as to act as drug carriers in order to pay back his/her debts which increases day by day for the “assistance” that the exploiters extend to their victims.¹³⁷

Although the exploitation can start after they have arrived in Italy from their home countries by their own means, many are victims

of trafficking in the first place. Italy is primarily a destination country for trafficked persons, primarily women and girls trafficked for sexual exploitation, but also boys trafficked for forced labour. Persons are primarily trafficked from Eastern Europe and the former Soviet Union (Albania, Poland, Hungary, Romania, Bulgaria, FRY, Ukraine and Moldova), Nigeria and South America; and to a lesser extent Asia, particularly China. Italy is also a transit point with ultimate destinations in other Western or Northern European countries. Organised criminal groups from Albania, Russia, Turkey, Nigeria and China are behind most trafficking in the country and are now collaborating with the Italian mafia.

Victims of trafficking for sexual exploitation, if they manage to escape from the hands of their exploiters, enjoy special protection in Italian legislation. As mentioned above, they are entitled to gain a renewable six months residence permit giving them access to a range of social services and future prospects of integration into Italian society, whether or not they denounce traffickers. However, OMCT is concerned by the fact that Italian

135 - *Ibid.*, p. 125.

136 - *Ibid.*, pp. 124-125.

137 - “Child Trafficking in Albania”, Daniel Renton, Save the Children, March 2001, p. 44.

authorities still seem to favour treating trafficked persons as illegal immigrants, resulting in deportation rather than allowing the victims to stay under law 286/98.¹³⁸ The Advocacy Project NGO¹³⁹ has reported that between 1999 and 2000, more than 500 Nigerian prostitutes were rounded up and deported back to Nigeria at very short notice. More recently, in August of this year, Italian police has undertaken a vast operation, named “clean streets”, against illegal immigration and prostitution throughout 11 regions of the country, which has ended up in the expulsion of 449 illegal immigrants involved in activities connected to prostitution – 159 men and 290 women.¹⁴⁰

Besides sexual exploitation, many victims of trafficking end up being exploited in forced labour, including begging. For example, in December 1998, police in Milan uncovered a begging ring organised by about 20 Albanians who were bringing children into

the country illegally and forcing them to beg. The operation freed 20 children aged between 13 and 16 living in primitive conditions in an abandoned factory who were forced to bring back the equivalent of at least \$30 in cash each day or face beatings and torture with cigarette burns.¹⁴¹ These children are also often sexually abused and “over time become involved in other illegal activities, passing on to more developed forms of delinquency”.¹⁴² In April 2000, Italian police launched several raids on sweatshops in 28 cities from Milan to Rome breaking up a criminal network run by Chinese, Russian and Italian involved in trafficking Chinese immigrants to Italy forcing them to work 12-16 hours a day in textile, apparel, shoe, and leather factories for little or no pay; children as young as 11 years old were found working up to 20 hours a day.¹⁴³

OMCT recommends the Italian Government to fully implement its current legislation - law 286/98 granting specific rights to victims of trafficking for sexual exploitation - and not to resort to deportations, which deprive the victims from the opportunity, *inter alia*, to testify and participate in legal proceedings. OMCT would further suggest to strengthen efforts in awareness

138 - “The need for effective witness protection in the prosecution of traffickers: a human rights framework for witness protection”, Elaine Pearson, Anti-Slavery International, February 2001, p. 11.

139 - <http://www.advocacynet.com/currentcampaigns:Nigeria>

140 - “Italia espulsa a 449 indocumentados por ‘actividades ilegales’”, Lola Galán, El País, 15 August 2002.

141 - BBC News, “Italy uncovers begging racket”, 21 December 1998.

142 - “Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union: Italy”, IOM, May 2001, p. 158.

143 - “Workers in Bondage”, Gail Edmonson, 27 November 2000, Businessweek online.

raising targeting, on one side, victims of trafficking who often are not aware of the existence of this law and therefore do not know their rights to stay in the country; and, on the

other, the population and public officials whose attitudes still contain a strong tendency to criminalize the victim and to treat him/her as an illegal immigrant.

VIII. Children in conflict with the law

8.1 Age of Criminal Responsibility

The age of criminal responsibility in Italy is 14 years of age¹⁴⁴. Children of the age group between 14-18 can be charged if they are capable of understanding and willing. When there is uncertainty over the age of the accused child, the judge will have to call for an expert's report. In the event that the expert's report still leaves doubts, the age will have to be guessed¹⁴⁵. Children below the age of 14 having infringed the criminal law receive care and supervision by the social service of the local community (municipalities, provinces). If children cannot remain within their family environment, the juvenile court¹⁴⁶ may order a placement in a foster family, a family-type community or in an institution, under the responsibility of the local social services¹⁴⁷.

8.2 The Juvenile Justice System in Italy

Italy adopted in 1988/89 a new legislation which sets the rules for penal procedures concerning children in conflict with the law, introducing very important changes within the Italian judiciary system. The new legislative framework, commonly referred to as DPR 448/88¹⁴⁸, sets an autonomous juvenile justice system, where the criminal code and code of criminal procedures are applicable only in a subsidiary way when DPR 448/88 does not foresee any ad-hoc measure¹⁴⁹.

144 - Article 88 of the Penal Code and Article 26, DPR 448/88. The latter is a new legislation which was introduced by the Governmental Decree No 448/88, adopted on 22 September 1988 (DPR 448/88) and subsequently transformed into the Parliamentary Law 272/89 (DLGS Nr 272/89).

145 - Article 8, DPR 448/88.

146 - See below.

147 - Italian First Periodic Report to the Committee on the Rights of the Child, CRC/C/70/Add.13, para.542.

148 - See footnote No 146.

149 - Article 1, DPR 448/88.

The system is based on three fundamental principles: the personality of the child, the specialisation of the penal procedures and the educative function. Furthermore, article 2 indicates which are the judicial bodies with exclusive competence for children in conflict with the law. These are the Juvenile Court, Prosecuting Attorney within the Juvenile Court, Examining Magistrate within the Juvenile Court, Attorney General of the Appeal Court, Juvenile Section of the Court of Appeal and the Magistrate for the Supervision of Minors¹⁵⁰. The main characteristic of these bodies is that, besides the presence of formal judges, private individuals can sit at their sessions. These individuals are chosen amongst experts in biology, psychology, psychiatry, criminal anthropology and pedagogy.

As far as Juvenile Courts are concerned, they are composed of two magistrates and two experts in child-related issues, a man and a women¹⁵¹. This specific composition

is one of the instruments to realise the fundamental principle of the reintegration and re-education of the child. Accordingly, before sentencing the child alleged to have infringed the penal law to a punitive measure, the competent bodies are obliged to analyse every circumstance and possible element that might have induced the child to such an act: his/her psycho-physic conditions, the environment where he/she grew up, his family, etc. Only after this assessment, the most appropriate measure can be decided upon aiming at the recovery of the child.

The Juvenile Court has competence over all criminal offences perpetrated by children below the age of 18¹⁵². Its competence ceases when the juvenile defendant reaches the age of 25 years old. It is also competent on matters relating to actions aimed at the re-socialisation of the juvenile delinquent both when the act does not involve the commission of any criminal offence and when they relate to juveniles who cannot be criminally charged or who are legally incapable.

The decisions of the Juvenile Court –located in every city where there is a Court of Appeal– may be appealed against in the juvenile division of the Court of Appeal.

150 - “Tribunale per i minorenni, Procuratore della Repubblica presso il Tribunale per i minorenni, Giudice per le indagini preliminari presso il tribunale per i minorenni, Procuratore generale presso la Corte d’appello, Sezione di Corte d’appello per i minorenni, Magistrato di sorveglianza per i minorenni” (Article 2, DPR 443/88).

151 - The requisites for a private individual to sit at the Juvenile Court are established by the law (article 2, RDL 1404/1934).

152 - Article 3, DPR 443/88.

8.3 Arrest and pre-trial detention

The arrest of a child and his/her pre-trial detention are allowed only for serious criminal offences for which the law establishes the penalty of life imprisonment or detention for no less than 9 years. Besides these, custody can also be applied for other serious crimes such as theft with aggravating circumstances, robbery, extortion, offences linked to the illegal production, introduction, selling and detention of fire arms, offences linked to drugs and narcotics, and for the crime of rape¹⁵³.

Upon arrest, the police must immediately inform the public prosecutor and the juvenile services. The public prosecutor can order the placement of the child in a retention centre¹⁵⁴ or released into the custody of his/her parents while waiting for the judge's decision. Within 48 hours the public prosecutor has to request the judge to determine whether or not the arrest was justified and accordingly either confirm or annul the arrest and decide upon the possible pre-trial detention of the child.

Pre-trial detention can be imposed on a child as a measure of last resort and when there is a danger that the child will try to es-

cape or tamper with the evidence, or where there is a risk of recidivism or perpetration of further serious crimes¹⁵⁵. Children detained while awaiting their trial are kept in Penal Institutes for Minors together with convicted children¹⁵⁶.

The length of pre-trial detention is reduced by two third of children between 14 and 16 years of age, and by one half for those between 16 and 18 years old¹⁵⁷. In practical terms, for children of the age group 14-16 years old the pre-trial detention can vary from a minimum of one month to a maximum of 2 years. For the children between 16-18 years of age the pre-trial detention can range from 1,5 months to 3 years, depending on the gravity of the offence.

8.4 Measures of diversion from the penal system¹⁵⁸

It has to be noted that the question of deprivation of liberty as a measure of last

153 - Article 23, paragraph 1, DPR 448/88.

154 - See below.

155 - Article 23, paragraph 2, DPR 448/88.

156 - See below.

157 - Article 23, paragraph 3, DPR 448/88.

158 - This analysis is mainly taken from Mara Bollini, *Le misure cautelari non detentive nel sistema di giustizia penali (sic) minorile, Tesi di Laurea in Diritto Penale Avanzato*, Anno Accademico 2001-2002, Università degli Studi di Bologna, unpublished.

resort stands at the core of the current Italian juvenile justice system. As a matter of fact, DPR 448/98 foresees for the child alleged to have infringed the penal law some non-detaining measures: prescriptions, placement at home and community placement. The measure has also to avoid the interruption of any ongoing education of the child.

Prescriptions¹⁵⁹ represent the first kind of non-detaining measures and they can include obligations to participate in activities of study, work or other activities deemed necessary for the child's education. Prescriptions may also foresee negative measures, such as the restriction on visiting specific places or persons, the prohibition of leaving home at specific hours, etc. The content of the prescriptions is left to the discretion of the judge and they represent an innovation because they are used for the first time as a penal measure and not as an administrative intervention.

The placement at home¹⁶⁰ is the second kind of non-detaining measures and it consists of the obligation for the child to stay at the family home or at another private home. Such a measure can be imposed when strong signs of the likelihood of culpability have arisen and when the alleged offence foresees the punishment of life imprisonment and in any case, of imprisonment for longer than 5 years. Parents or adult persons, in whose charge the child is placed, are responsible for his/her supervision in collaboration with the social services for children.

The placement in a community¹⁶¹ is the third kind of non-detaining measures and the requisites for this measure to be applied do not differ from the home stay. Such a measure can be considered as an aggravating measure compared to the placement at home. The community has to be officially recognised, has to resemble to a family setting with a maximum number of 10 children, has to be operated by professionals and collaborate with the social services. Finally, the placement in a community has to aim at the integration of the child and favour his/her interaction with children who are not undergoing a penal procedure.

159 - Article 20, DPR 448/88.

160 - Article 21, DPR 448/88.

161 - Article 22, DPR 448/88.

8.5 Mediation and restorative justice

Another very important innovation introduced by DPR 448/88 in the juvenile justice system is the concept of mediation and restorative justice as a possible way to exercise justice without instituting legal proceedings.

Possible measures of mediation are foreseen both during the various phases preceding the trial and the judgment and during the phase of execution of alternative sanctions. As for measures during the pre-trial phase, one has to mention:

- the entering of a non-suit and consequently, not to prosecute because the fact is not important¹⁶², providing for a preliminary hearing of the minor, of the person exercising the parental authority and of the victim;
- the suspension of the trial and probation of the minor¹⁶³ by means of a ruling of the judge which can also contain orders aimed at repairing the damage and promoting conciliation initiatives with the victim. Moreover, it also provides that when the judge deems that probation has had a pos-

itive outcome, he has to issue a judgment ruling that the offence is extinguished¹⁶⁴.

In addition to these phases, mediation is also possible during the phase of execution of alternative sanctions. In this regard, mediation may be imposed both during the phase of the preliminary hearing, and in the order of placing the offender under the supervision of a social worker, an alternative measure to detention¹⁶⁵.

In practice, in developing the project of probation, a “symbolic” interpretation of reparation and reconciliation has prevailed, whereby the child had to engage in activities such as community service programmes for his/her own integration, therefore giving this experience the character of reparation and reconciliation between the individual and social community. Consequently, reparation has taken the form of participation of the child in voluntary services at voluntary bodies, associations and institutions. “According to this operational scheme, reparation activities do not include a meeting between the parties and, as a matter of fact,

162 - Article 27 of DPR 448/88, “Sentenza di non luogo a procedere per irrilevanza del fatto”.

163 - Article 28, DPR 448/88, “Sospensione del processo e messa alla prova”.

164 - Article 29, DPR 448/88, “Dichiarazione di estinzione del reato per esito positivo della prova”.

165 - See following paragraph.

it is an *operator* belonging to the field of Justice who helps the minor understand the meaning of the community service experience, which is not a punitive sanction restricting his personal freedom, it is instead a socially useful activity. The *operator*, in particular the educator or the social worker in charge of the case, helps the minor see his community service experience as something with a strong restorative content, because this is a very important element to make him feel responsible for the damage resulting from the offence he perpetrated”¹⁶⁶.

8.6 Detention and alternatives to detention

The Juvenile Court has the competence of deciding whether to impose the sanction of detention for a crime committed by a child. According to the Italian legislation, the deprivation of liberty has to be used as a measure of last resort and any measure taken

has to aim at the rehabilitation of the child, taking into account his/her personality.

DPR 448/88 does not set the criteria for detention penalties and therefore, according to the principle of subsidiarity set in article 1¹⁶⁷, the matter is regulated by the Code of Criminal Procedures, as for adults. Furthermore, the Criminal Code, in article 38, establishes a general principle according to which penalties for minor defendants have to be reduced compared to those for adults¹⁶⁸.

Children serving a sentence of detention and the ones awaiting trial are kept in Penal Institutes for Minors. Young adults up to the age of 21 servicing a detention sentence for offences committed while minors are also kept in the same institutes. There are 17 Penal Institutes for Minors in Italy, almost one per every region¹⁶⁹. Only four of them (Milan, Turin, Rome and Nisida) have sections for girls.

Even after a criminal sanction has been inflicted through a conviction, the child is not always imprisoned in a penal institution. In fact, alternative measures to detention can be ordered and, in particular:

166 - Italian Ministry of Justice, *Mediation and Restorative Justice in the Italian Criminal Justice System*, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000..

167 - See above.

168 - “È imputabile chi, nel momento in cui ha commesso il fatto, aveva compiuto i quattordici anni, ma non ancora i diciotto, se aveva capacità d'intendere e di volere; *ma la pena è diminuita*”, Article 98, Criminal Code (emphasis added).

169 - The regions are 20 in total.

- To be placed on probation with the social services, when the imprisonment inflicted does not exceed three years: the measure is adopted when it is believed that it contributes to the re-education of the offender and there is the certainty that the convicted child will commit other offences;
- To serve his/her time in semi-detention or controlled freedom when the imprisonment inflicted does not exceed two years, enabling the child to continue his educational curriculum and/or to engage in a working activity or any other activity useful for his/her reintegration into society¹⁷⁰.
- Conditional release anticipating the release at any time from the execution of the punishment, whatever its duration.

8.7 Training of personnel

In principle, according to the Italian legislation, all staff involved in the juvenile justice system should receive training. These include the Special Sections for Minors within the Criminal Investigation

Department of the Public Prosecutor's Office, Court-appointed lawyers, the bar association of any city where there is a Juvenile Court, Judges and Public Prosecutors. Nevertheless, the attendance is not compulsory and has proven to be quite law and weak. Furthermore, different bodies are responsible for the training and this does not help in the co-ordination and coherence of the content.

8.8 Practice

OMCT welcomes the extensive part on the Italian Government report related to the children involved with the System of the Administration of Justice, the comprehensive presentation of the legislative framework and the analysis of its implementation.

The official statistics by the Ministry of Justice show a pattern of discrimination in relation to foreign children starting from the arrest and diversion measures to pre-trial

170 - Article 30, DPR 448/88, "Sanzioni sostitutive".

171 - "Centri di prima accoglienza".

172 - These statistics reflect the numbers of entries and not the number of children having been accommodated in the centre. Accordingly, a child having passed three times in the centre would count for three entries. The statistics are taken from Ministero della Giustizia, Dipartimento Giustizia Minorile, *Flussi di utenza dei Servizi della Giustizia Minorile - Anno 2000*, Roma, giugno 2001.

detention and detention. In 2000, the admissions to Reception Centres¹⁷¹ amounted to 3,994, 6% less than the previous year¹⁷². These centres accommodate children under arrest, apprehension or accompanied until the preliminary hearing by the Juvenile Court.

Although this tendency represents a reversal of the trend during the previous three years, a breakdown of the data by nationality shows that this decrease is almost entirely linked to the Italian component, which compared to 1999 decreased of 12%. Conversely, the foreign component, firstly inferior to the Italian one, as from 1997 has continued to prevail and, in 2000, constituted 56,3% of the total number of entries in the Reception Centres (see Table 1)

Willing to disaggregate according to the gender, the prevalence of boys (78%) is striking in comparison to girls (22%). This difference is evident for the Italians (in 2000, 96,7% of boys and 3,3% of girls), but

less accentuated for the foreigners for whom, in 2000, the male component accounted for 63,7% of the cases¹⁷³.

It is also interesting to note that during 2000, the most recurrent offences for which children have been arrested and/or apprehended include aggravated theft, aggravated robbery and other attacks against private property (3065 cases out of 4391, constituting about 70% of the offences). Furthermore, it is also worth noting that in 2000, Italian juveniles were arrested for crimes against personal integrity in 6% of the cases, while the rate for foreign juveniles amounted to 3%. These crimes included murder, attempted murder, and sexual violence.

The same pattern of discrimination has been registered when applying diversion measures and pre-trial detention. The figures of Table 2 show that Italians are granted measures such as prescriptions (29%) and placement at home (31%); for Roma children, the most applied measure is the placement at home in the camp (36%) followed by pre-trial detention (29%); for foreign children pre-trial detention represents almost 50% of the total¹⁷⁴.

171 - "Centri di prima accoglienza".

172 - These statistics reflect the numbers of entries and not the number of children having been accommodated in the centre. Accordingly, a child having passed three times in the centre would count for three entries. The statistics are taken from Ministero della Giustizia, Dipartimento Giustizia Minorile, *Flussi di utenza dei Servizi della Giustizia Minorile - Anno 2000*, Roma, giugno 2001.

173 - *Ibid.*

174 - Ministero della Giustizia, Ufficio Centrale per la Giustizia Minorile, *Flussi di utenza dei Servizi della Giustizia Minorile - Anno 1999*, Roma.

TABLE I :
ENTRIES INTO RECEPTION CENTRES DURING 1991-2000
BREAKDOWN PER NATIONALITY AND GENDER

Years	Italians			Foreigners			Total		
	male	female	Total	male	female	total	male	female	total
1991	2.100	70	2.170	976	926	1.902	3.076	996	4.072
1992	2.512	79	2.591	1.020	941	1.961	3.532	1.020	4.552
1993	2.314	62	2.376	913	833	1.746	3.227	895	4.122
1994	2.089	72	2.161	1.067	857	1.924	3.156	929	4.085
1995	1.882	54	1.936	1.283	956	2.239	3.165	1.010	4.175
1996	1.880	72	1.952	996	842	1.838	2.876	914	3.790
1997	1.953	54	2.007	1.151	1.038	2.189	3.104	1.092	4.196
1998	1.848	69	1.917	1.385	920	2.305	3.233	989	4.222
1999	1.905	68	1.973	1.321	954	2.275	3.226	1.022	4.248
2000	1.686	58	1.744	1.433	817	2.250	3.119	875	3.994

Source : Ministero della Giustizia, Dipartimento Giustizia Minorile, *Flussi di utenza dei Servizi della Giustizia Minorile - Anno 2000*, Roma, giugno 2001

TABLE 2
DIVERSION MEASURES GRANTED IN 1999
PER NATIONALITY OF THE JUVENILES

Measures	Italians		Roma		Foreigners		Total	
	MF	F	MF	F	MF	F	MF	F
Art.20 Prescriptions	717	19	41	15	43	1	801	35
Art.21 Placement at home	760	22	127	70	32		919	92
Art.22 Community placement	555	26	79	23	106	6	740	55
Art.23 Pre-trial detention	427	12	103	30	161	6	691	48

Source : Ministero della Giustizia, Ufficio Centrale per la Giustizia Minorile, *Flussi di utenza dei Servizi della Giustizia Minorile - Anno 1999*, Roma

And finally, the alternatives to detention are much more granted to Italian juveniles than to foreigners. In 1999, for example, 526 Italian benefited from alternatives to detention, versus 157 Roma and 46 Foreigners¹⁷⁵. Furthermore, a breakdown of foreign children being detained in Penal Institutes for Minors reveals that

the majority comes from the former Yugoslavia and Albania, followed by Tunisia, Morocco and Algeria.

Very little information is available on the conditions of detention within the Penal Institutes for Minors, besides the allegations of ill-treatment reported by CPT¹⁷⁶. This can be seen as a direct consequence of the

¹⁷⁵ - *Ibid.*

¹⁷⁶ - See above, pp. 9-10.

denial of the Government to allow external visits to the institutes. Since 1993, the Italian Association of Juvenile and Family Magistrates has asked to the Central Office for Juvenile Justice¹⁷⁷ to be authorised to visit the penal institutions for minors, but this authorisation has always been refused, without any declared reason¹⁷⁸.

In addition to this, another aggravating circumstance is that in Italy there is no regulation for the administration of penal institutions for minors and therefore the one for adults¹⁷⁹ applies by virtue of a transitory disposition foreseen in article 79. The Constitutional Court pronounced two sentences declaring the unconstitutionality of some of the provisions included in the rules for the administration of penal institutions for adults when applied to children¹⁸⁰. The unconstitutionality was grounded on the argument that in the case of detained minors, rules need a certain degree of flexibility especially in light of the reintegration aim of any measures.

8.9 The new proposed bills reforming some principles and elements of the current juvenile justice system

The Italian Government is currently considering a reform of some principles and elements of the current juvenile justice system. Two bills have been presented by the Minister of Justice to the Justice Commission of the Italian Parliament during the course of 2002¹⁸¹ and are currently under discussion.

The general spirit of the reform, as also stated by the Ministry of Justice in the technical relation presenting bill nr 2501 to the Parliamentary Commission, is the need for adapting the current system to the changed social climate, to the nature of juvenile deviance and as a response to the occurrence of juvenile criminality. It is believed that

177 - "Ufficio centrale per la Giustizia Minorile", a department of the Ministry for Justice.

178 - CETIM, *Indagine sugli istituti penali per minori*, url : http://www.cestim.org/duo-palazzi/studi_explorer_%201%20-%204/pagine%20web/argomentodevianzaminorile.htm

179 - Legge 26 luglio 1975 n.354:Norme sull'ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della libertà.

180 - Sentence 450/1998 and Sentence 436/1999.

181 - Disegno di legge n. 2501, 8 marzo 2002 concerning penal procedures for minors and Disegno di legge n. 2517, 14 marzo 2002 concerning civil procedures for minors.

these aspects were not considered when adopting DPR 448/88¹⁸².

In particular, the bill proposes to change the proportion of judges/private individuals in the composition of the juvenile courts, willing to have 3 judges and 1 expert, instead of 2 judges and 2 experts (articles 1-3). Secondly, it aims at establishing clear rules in terms of detention terms, suggesting that penalties should be reduced up to $\frac{1}{3}$ for children aged 16-18 and up to $\frac{1}{3}$ for children aged 14-16. Thirdly, the new bill proposes an extension of the crimes for which pre-trial detention has to be applied and immediate arrest carried out, and, in particular, the list would include “aggravated resistance to public official” during public demonstrations. This is said to give to the public forces, in charge of the public order, new instruments to respond to attacks by groups where it would be difficult to differentiate between adults and minors¹⁸³. Finally, the new bill establishes for children being in pre-trial detention or serving an imprisonment sentence and turning 18 in the meantime, to be transferred to adult prisons.

8.10 Recommendations regarding children in conflict with the law

OMCT welcomes the current juvenile justice system, its underpinning structure and principles which reflect a large part of the international norms and standards on juvenile justice, enshrined, amongst others, in the Convention on the Rights of the Child. Nevertheless, and as the government report also states, their implementation is, under some aspects, backwards and lots still remains to be done.

In particular, OMCT would recommend to the Italian Government to:

- co-ordinate the responsibilities for the training of personnel involved with children within the juvenile justice system and to render this training obligatory; the training should also pay a particular attention to the economic, social and cultural conditions in which foreign children live and/or come from;
- to give urgent priority to the current pattern of discrimination against foreign and Roma children within the juvenile justice system by, *inter alia*:

182 - XIV Legislatura, Porgetto di legge – N. 2501, Relazione tecnica, url: http://www.camera.it/_dati/leg14/lavori/schedela/2501.htm

183 - *Ibid.*

- organising an awareness campaign through the media to favour an attitude of non-criminalisation of foreign and Roma children, by, *inter alia*, informing the general public of the incidence and kind of offences allegedly committed by them;
- including within personnel of the local social services, of the youth services of the Ministry of Justice, in the communities, reception centres and penal institutions for minors, experts and experienced people having worked with foreign and Roma children in Italy;
- guaranteeing to foreign and Roma children that they enjoy, without any discrimination of any kind, the right to be deprived of liberty as a measure of last resort;
- allow visits to the Reception Centres and Penal Institutes for Minors by impartial and independent bodies, including by children's rights NGOs;
- adopt as a matter of urgency rules and regulations for the administration of penal institutions for minors, talking into account their evolving personality, in-

herent vulnerability and aiming at their re-integration into society;

- provide adequate resources to effectively implement the measures, and establish the bodies foreseen in the juvenile justice system, including by paying particular attention to prevention and diversion measures.

As far as the new proposed reform is concerned, while welcoming the fact that juvenile justice is on the agenda of the Italian government, OMCT fears that such a reform does not completely respond to new trends of, or an increase in criminal acts perpetrated by children. According to the statistics published by the Government, the rates of juvenile criminality have been quite steady during the last years and the typology of offences allegedly committed has not relevantly changed¹⁸⁴. Therefore, children in Italy do not seem to be committing more violent crimes today than in the past. OMCT is afraid that the new measures proposed in the reform, by putting a pronounced emphasis on judicial component of the Juvenile Courts and extending the list of crimes for which pre-trial detention can be applied,

184 - Osservatorio nazionale per l'infanzia, *Non solo sfruttati o violenti, Bambini e adolescenti del 2000, 2001*, pp. 139-153

might convey the idea that the all theoretical approach behind the current system has to be overcome. In particular, OMCT fears that the principle of diversion of children from the justice system, the principle of the deprivation of liberty as a last measure of last resort, and the principle of re-integration of children into society will be underplayed.

OMCT would strongly recommend the Italian government to:

- fully guarantee that the international norms and standards on juvenile justice will remain at the core of any reform of

the Italian Juvenile Justice system, in compliance with the obligations deriving from being State Party to the Convention on the Rights of the Child;

- provide the Committee on the Rights of the Child with statistics and data showing the ground and reasons for such a reform;
- ensure that the new reform, if adopted, reflect the recommendations of the Committee on the Rights of the Child on the matter.

IX. Conclusions and Recommendations

Regarding the principle of non-discrimination, OMCT would recommend that the Committee on the Rights of the Child:

urge the Italian Government to:

- provide more information on prejudice against children on ethnic or national grounds;
- undertake education programmes, both within school and through public campaigns, aiming to promote a culture of acceptance and tolerance at all levels of the community in order to combat stereotypes and racist behaviour or attitudes in the Italian population against immigrants and Roma communities;
- implement training programmes to promote respect for children of Romani descent by teachers and other school officials, and monitor the behaviour of teachers in the classroom.

Regarding torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT would recommend that the

Committee on the Rights of the Child:

urge the Italian Government to:

- clearly establish torture as a crime in Italy's criminal code based on the definition set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- establish children as specific holders of the right to be protected against torture or other cruel, inhuman or degrading treatment or punishment by establishing more severe sentences against perpetrators acting against a child, setting up a proper system of complaint through which the child can effectively ensure that his/her rights are being respected and carrying out appropriate measures to promote physical and psychological recovery as well as social reintegration of the child victim;
- enact a law formally prohibiting life imprisonment for children;

- provide more information on the *de facto* ill-treatment or torture of children in the hands of public authorities;
- ensure that prosecutors and judges diligently investigate all allegations of torture and ill-treatment made by child victims;
- implement preventive programmes, in particular by ensuring education and training for all personnel involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, in particular the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty;
- provide more information on the measures taken to implement effective procedures for internal monitoring and disciplining of the behaviours of public officials, including sanctions for failure to provide detainees with prompt access to a lawyer, adequate medical care and the right to inform relatives.

Regarding other forms of violence against children, OMCT would recommend that the Committee on the Rights of the Child:

urge the Italian Government to:

- enact a law formally prohibiting parental use of corporal punishment;
- review the criminal protection afforded to children against ill-treatment and violence within the family or any other structure exercising authority and care over the child in order to ensure that every child, defined as any person under 18 years of age, is covered by these provisions;
- ensure that general provisions protecting individuals against violence entail aggravating circumstances in the case where the offence is committed against a minor defined as any person under 18 years of age;
- provide additional information on the protection of children against mental and physical violence in schools, institutions and within the family.

Regarding child labour and exploitation,

OMCT would recommend that the Committee on the Rights of the Child:

urge the Italian Government to:

- provide additional information regarding the design and implementation of future policies based on the relatively detailed recent picture of child labour in Italy given by ISTAT data;
- accompany improvement of State mechanisms of child labour control by special policies targeting the families most at risk in the South as well as in the North of the country, including economic support and awareness raising, and by giving more attention towards professional training as a mean of reducing the risk of the marginalisation of working children in the lower segments of the labour market later;
- initiate a similar collection of data relating this time to foreign nationals and migrant working children as these children run a particular risk of being exploited in the Italian underground economy;
- to establish the exploitation of children

in organised crime as an autonomous crime in the national legislation accompanied with appropriate sanctions.

Regarding unaccompanied migrant children and trafficking, OMCT would recommend that the Committee on the Rights of the Child:

urge the Italian Government to:

- amend article 671 of the criminal code as to protect every child, defined as any person under 18 years of age, from being exploited in begging rings;
- establish a co-ordinating structure setting the minimum standards for a uniform policy in favour of the unaccompanied migrant child, based primarily on “the best interest of the child”, in order to overcome the differences in treatment depending on the regions and the judges, and provide adequate resources to effectively implement the policy;
- provide some clarifications concerning the treatment of children within the recently adopted law n° 189 on immigration and the safeguarding of their rights,

in particular concerning the existence of specific provisions for the processing of asylum claims submitted by unaccompanied migrant children;

- to fully implement its current legislation - law 286/98 granting specific rights to victims of trafficking for sexual exploitation - and not to resort to deportations;
- to strengthen efforts in awareness raising targeting, on one side, victims of trafficking who often are not aware of their rights; and, on the other, the population and public officials whose attitudes still contain a strong tendency to criminalize the victim and to treat him/her as an illegal immigrant.

Regarding children in conflict with the law, OMCT would recommend that the Committee on the Rights of the Child:

urge the Italian Government to:

- co-ordinate the responsibilities for the training of personnel involved with children within the juvenile justice system and to render this training obligatory; the training should also pay a particular at-

tention to the economic, social and cultural conditions in which foreign children live and/or come from;

- to give urgent priority to the current pattern of discrimination against foreign and Roma children within the juvenile justice system by, *inter alia*:
 - organising an awareness campaign through the media to favour an attitude of non-criminalisation of foreign and Roma children, by, *inter alia*, informing the general public of the incidence and kind of offences allegedly committed by them;
 - including within personnel of the local social services, of the youth services of the Ministry of Justice, in the communities, reception centres and penal institutions for minors, experts and experienced people having worked with foreign and Roma children in Italy;
 - guaranteeing to foreign and Roma children that they enjoy, without any discrimination of any kind, the right to be deprived of liberty as a measure of last resort;

- allow visits to the Reception Centres and Penal Institutes for Minors by impartial and independent bodies, including by children's rights NGOs;
 - adopt as a matter of urgency rules and regulations for the administration of penal institutions for minors, taking into account their evolving personality, inherent vulnerability and aiming at their re-integration into society;
 - provide adequate resources to effectively implement the measures, and establish the bodies foreseen in the juvenile justice system, including by paying particular attention to prevention and diversion measures.
- fully guarantee that the international norms and standards on juvenile justice will remain at the core of any reform of the Italian Juvenile Justice system, in compliance with the obligations deriving from being State Party to the Convention on the Rights of the Child;
 - provide the Committee on the Rights of the Child with statistics and data showing the ground and reasons for such a reform;
 - ensure that the new reform, if adopted, reflect the recommendations of the Committee on the Rights of the Child on the matter.



COMMITTEE ON THE RIGHTS OF THE CHILD
32nd Session - Geneva, 13-31 January 2003

Concluding observations
of the Committee
on the Rights of the Child:
Italy

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the second periodic report of Italy (CRC/C/70/Add.13), submitted on 21 March 2000, at its 840th and 841st meetings (see CRC/C/SR. 840 and 841), held on 16 January 20003, and adopted at its 862nd meeting, (CRC/C/SR.862) held on 31 January 2003, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the second periodic report with its annexes which follow the reporting guidelines of the Committee. The Committee welcomes the self critical character of the report and the participatory process leading its preparation. It also takes note of the timely submission of the written replies to its list of issues (CRC/C/Q/ITA/2), which allowed for a clearer understanding of the situation of children in the State part. The Committee also notes the positive dialogue it had with the delegation of the State party. The Committee ack-

nnowledges that the presence of a high level and large delegation directly involved in the implementation of the Convention allowed for a better understanding of the rights of the child in the State party.

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE PARTY

3. The Committee welcomes:

- (a) the ratification of the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography;
- (b) the establishment of a special Parliamentary Commission on Children and of a National Observatory on Children (Law 451/97);

- (c) the establishment of the National Documentation and Analysis Centre for Children and Adolescents which has gathered an impressive amount of data and research on children made available on its website;
- (d) the adoption of law 285/97 containing provisions on the promotion of rights and opportunities for children and adolescents which set up a National Fund for Children and Adolescents;
- (e) the Adoption of Law 269/98 against the exploitation of prostitution, pornography, and sexual tourism to the detriment of children;
- (f) the campaign against female genital mutilation;
- (g) the widespread inclusion of children with disabilities into the mainstream schools;
- (h) the ratification of the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and
- (i) the ratification of the Hague Convention

on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

C. PRINCIPAL SUBJECTS OF CONCERN AND RECOMMENDATIONS

Previous concluding observations

- 4. The Committee regrets that some of the concerns it expressed and the recommendations it made (CRC/C/15/Add.41) after its consideration of the State party's initial report (CRC/C/8/Add.18) have been insufficiently addressed, particularly those contained in paragraphs 13 and 15 to 22, such as coordination in the implementation of the Convention, non-discrimination, ill-treatment of children. Those concerns and recommendations are reiterated in the present document.
- 5. The Committee urges the State party to make every effort to address the previous recommendations that have not yet been implemented and the list of concerns contained in the present concluding observations.

1. General Measures of Implementation

Legislation

- ◆ 6. The Committee notes that a number of substantive pieces of legislation have been adopted and that reference to the Convention is made in some of them. In addition, the Committee welcomes the information provided by the State party on draft laws under consideration, including with respect to juvenile justice and education..
- ◆ 7. The Committee recommends that the State party continue to rigorously review the legislation and ensure that national and regional laws are rightsbased and conform to international human rights standards, including the Convention and effectively implemented.

Resources

- ◆ 8. The Committee welcomes the adoption of the Guidelines of the Italian Cooperation on Children and Adolescent Issues offering a vision of the development of the younger generations as an area of investment. Nevertheless, the Committee remains concer-

ned that the Convention is not implemented to the “maximum extent of ... available resources” as stipulated by article 4 of the Convention.

- ◆ 9. The Committee recommends that the State party continue to increase as far as possible resources allocated to children and their family and undertake an analysis of all sectoral and total budgets across the State party and in the Regions in order to analyze the proportion spent on children, identify priorities and allocate resources to the “maximum extent of... available resources”. The Committee also recommends that the State party apply this principle in the activities carried out by the Foreign Ministry’s international development aid and cooperation.

Coordination

- ◆ 10. The Committee welcomes the establishment of the National Observatory on Children and Adolescents (Law 451/97) which coordinates the policies and programmes with regard to children at the national, regional and local levels. In addition, the Committee notes with appreciation that this National Observatory is in charge of drafting a National Plan of Action for Children every two year to

set up priorities and to coordinate all actions regarding children. The Committee further notes the regular meetings of the State-Regions Conference (Conferenza Stato-Regioni) aimed at coordinating activities between national and regional level and at monitoring the implementation of policies at regional and national levels. The Committee is concerned that this coordination is not sufficient and that some specific issues are coordinated outside this National Observatory. The Committee is also concerned at the lack of structured coordination with NGOs.

11. The Committee recommends that the State party:

- (a) Strengthen effective coordination, in particular by the National Observatory and the State-Regions Conference, within and between government agencies at national, regional and local levels in the implementation of policies for the promotion and protection of the child, as it previously recommended (CRC/C/15/ Add. 41, para. 13);
- (b) Ensure closer and more active cooperation with non-governmental organizations working for the rights of the child, especially at the local level; and

- (c) Encourage the participation of children in the activities of the National Observatory.

National Plan of Action

12. The Committee notes that the new Plan of Action for children is going to be discussed by the Parliament and that the State party considers the possibility to develop another plan for the implementation of the World Fit for Children Outcome document of the UN-GASS. The Committee is concerned at the possible discrepancies between the two aforementioned plans.

13. The Committee recommends that the State party:

- (a) expedite the consideration of the National Plan of Action for its adoption;
- (b) ensure the harmonization between the National Plan of Action and the plan for the implementation of the UNGASS Outcome document;
- (c) effectively monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children.

Independent monitoring structures

14. The Committee notes the establishment of Offices of Public Defender of Childhood in 4 regions and the efforts to establish a national public defender for children (*inter alia* the bills pending in the Parliament), but remains concerned that there is no central independent mechanism to monitor the implementation of the Convention which is empowered to receive and address individual complaints of children at the regional and national levels.

15. The Committee recommends that the State party complete its efforts to establish a national independent ombudsman for children –if possible part of a national independent human rights institution (See General Comment No.2 on the role on independent human rights institutions), and established in accordance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/ 134) to monitor and evaluate progress in the implementation of the Convention. It should be accessible to children, empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner, and equipped with the means to address them ef-

fectively. The Committee further recommends that appropriate linkage between the national and regional institutions be developed.

Data Collection

16. The Committee notes with appreciation the efforts undertaken to improve the data collection, notably through the establishment of the National Documentation and Analysis Centre for Children and Adolescents. However, the Committee remains concerned at the insufficient data in some areas covered by the Convention. The Committee is also concerned that data collection is still obtained on the basis of a family-centered approach rather than by considering the child as an autonomous human being. The Committee is further concerned at the lack of coherence between the various bodies in charge of data collection, and in the various Regions.

17. In line with its previous recommendations, (*Ibid.* para. 14), the Committee reiterates its recommendation that the State party:

- (a) strengthen its mechanism for collecting and analyzing systematically disaggregated data on all persons under 18 for all

areas covered by the Convention, with special emphasis on the most vulnerable groups, including children with disabilities, Roma children, children belonging to migrant families, unaccompanied children, children victims of violence and children of economically and socially disadvantaged households;

- (b) use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring the Convention; and
- (c) ensure the coherence of the data collection process by the various institutions, both at national and regional levels. Training/Dissemination of the Convention.

18. The Committee notes with appreciation efforts to disseminate the Convention, notably through the National Documentation and Analysis Centre for Children and Adolescents, and in particular the inclusion of the rights of the child into civic education. However, the Committee remains concerned that the activities to disseminate, raise awareness and train professionals are not always undertaken in a systematic and targeted manner.

19. The Committee recommends that the State party:

- (a) strengthen and continue its programme for the dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups;
- (b) develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children /e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel).

2. General Principles

Non-discrimination

20. The Committee notes the establishment of several Observatories on discrimination in the State party as well as the provisions on discrimination in the Law 40/98

(Regulations of immigration and Rules on the Conditions of the Foreigner). None the less, the Committee is concerned at racist incidents against minorities; the use of hate speech in public presentations; the disparities in the enjoyment of economic and social rights, particularly health, social welfare, education, and housing experienced by poor children, Roma children, non-Italian children, including unaccompanied minors, and disabled children.

21. In accordance with article 2 and other related articles of the Convention and in line with its previous recommendations (*ibid.*, paras. 17-18), the Committee recommends that the State party:

- (a) take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes, and implement the recommendations of the Committee on the Elimination of Racial Discrimination (A/56/18, paras. 298/320);
- (b) strengthen its efforts to incriminate and take appropriate penal sanctions against any act of racism, racial discrimination, xenophobia, and related intolerance;

- (c) carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of this evaluation the necessary steps to prevent and eliminate discrimination through proactive measures;
- (d) ensure that the devolution process will enhance the elimination of disparities between children based on the wealth of the Region they belong to;
- (e) continue to prioritize and target resources and social services to children belonging to the most vulnerable groups; and
- (f) study promptly the situation of foreign children in detention, ensure their full rights without discrimination especially to education and ensure their right to integration into society.

22. The Committee requests that specific information be included in the next periodic report on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted by the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and

taking into account the General Comment No. 1 on article 29, paragraph 1 (aims of education).

Best interests of the child

23. The Committee welcomes that the Constitutional Court has made a constitutional principle of the best interests of the child but remains concerned that the general principle of the best interests of the child (art. 3) is not fully applied and duly integrated in the implementation of the policies and programmes of the State party.

24. The Committee recommends that the State party take all appropriate measures to ensure that the general principle of the best interests of the child is appropriately integrated in all legislation and budgets, as well as judicial and administrative decisions and in projects, programmes and services which have an impact on children.

Respect for the views of the child

25. The Committee is concerned that the general principle as laid down in article 12 of the Convention is not fully applied in

practice. In that regard, the Committee is concerned that the right of the child to be heard is insufficiently guaranteed in proceedings affecting her or him, in particular in cases of the separation of parents, divorce adoption, foster care, or within education.

26. The Committee recommends that:

- (a) legislation governing procedure in courts, and administrative proceedings ensure that a child capable of forming his/her own views has the right to express these views and that they are given due weight;
- (b) particular emphasis should be placed on the right of every child to participate in the family, at school, within other institutions and bodies, in society at large, with special attention to vulnerable groups; and
- (c) awareness-raising among the public at large as well as education and training of professionals on the implementation of this principle should be reinforced.

3. Civil Rights and Freedoms

The right to an identity

27. The Committee is concerned that adopted children cannot know the identity of their natural parents even after having reached majority and when proved to be in their best interests. The Committee is further concerned that children born out of wedlock legally do not have a mother nor a father unless they are recognized by their mother and/or father.

28. In light of article 7 of the Convention, the Committee recommends that the State party:

- (a) ensure, as far as possible, respect for the child's right to know his or her parents' identities, should it be an adopted child or a child born out of wedlock who has not been recognized by his/her both parents;
- (b) urgently review and change legislation in order to ensure that children born out of wedlock do have from birth legally a mother (in accordance with the European Court on Human Rights' decision *Marckx v. Belgium* and the rule *mater semper*

certa est) and to encourage recognition of these children by their father (as ways to prevent "easy" abandonment of children);

- (c) to ratify the European Convention on the Legal Status of Children born out of Wedlock.

Freedom of thought

29. The Committee is concerned that, as mentioned in the State party report [para. 147], children, especially in elementary schools, may suffer from marginalization if they abstain from religious instruction which is mainly covering Catholic religion. In addition, the Committee is concerned that parents, notably those from foreign origin, are not always aware that religious instruction is not compulsory.

30. In light of articles 2, 14 and 29 of the Convention, the Committee recommends that the State party make sure that parents, in particular from foreign origin, when they are filling out the relevant forms, are aware that Catholic religious instruction is not compulsory.

Torture and ill-treatment

31. The Committee is deeply concerned about allegations of instances of ill-treatment by law enforcement officers against children and at the prevalence of abuse, in particular against foreign and Roma children.

32. In line with its previous recommendations (*ibid.*, para.20), the Committee recommends that the State party:

- (d) incorporate the crime of torture or other cruel, inhuman or degrading treatment or punishment into criminal law;
- (e) set up child-sensitive mechanisms to receive complaints against law enforcement officials regarding ill-treatment during arrest, questioning and police custody and with detention centres;
- (f) systematically train the police and carabinieri forces as well as professional of detention centres on the human rights of children.

4. Family Environment and Alternative Care

Children deprived of family environment

33. The Committee notes with concern that the Law 184/83 (as amended by the law 149/2001) regarding adoption and foster care has not been widely implemented throughout the State party and that there are still more children placed in institutions than in foster care. The Committee expresses also its concern at the high number of children who are placed in institutions for social protection measure purposes and sometimes together with juvenile offenders. In addition, the Committee is concerned that, according to a 1998 study of the National Documentation and Analysis Centre for Children and Adolescents, period of stay in institutions can be very long, contact with the family is not always guaranteed and that 19,5% of these institutions did not have proper authorisation.

34. In light of article 20 of the Convention, the Committee recommends that the State party:

- (a) take all necessary measures to ensure the implementation of the Law 184/83;

- (b) as preventive measures, improve social assistance and support to families to help them with their child-rearing responsibilities, including through parents education, counselling and community-based programmes;
- (c) take effective measures to develop alternative measures to institutionalization, such as foster care, family-type foster homes and other family-based alternative care and place children in institutions only as a measure of last resort;
- (d) ensure regular inspections of institutions by independent bodies;
- (e) establish effective mechanisms to receive and address complaints from children in care, to monitor standards of care and, in light of article 25 of the Convention, to establish regular periodic review of placement.

Adoption

35. The Committee welcomes the State party's ratification of the Hague Convention of 1993 on Protection of Children and Co-operation in respect of Inter-country

Adoption, but remains concerned at the different proceedings and costs implied for domestic adoption depending on the authorized agency involved.

36. In light of article 21 of the Convention, the Committee recommends that the State party take necessary measures to:

- (a) harmonize proceedings and costs for domestic adoption among authorized agencies throughout the State party; and
- (b) conclude bilateral agreements with (sending) countries which have not ratified the aforementioned Hague Convention.

Violence, abuse and neglect

37. The Committee welcomes the establishment of a National Commission for the coordination of Action regarding maltreatment, abuse and sexual exploitation of children and the adoption of a global strategy. In addition, the Committee welcomes the enactment of Act 66/96 on sexual violence and Act 154/2001 on domestic violence but remains concerned at the lack of comprehensive data and information on child abuse and/or neglect. Moreover, the Committee is concerned

at the age limit set up in the legislation regarding violence against children as children above 14 or 16 years (depending of the relations with the perpetrator) do not benefit from the same protection.

38. In light of article 19 of the Convention, the Committee recommends that the State party:

- (a) undertake studies on violence, ill-treatment and abuse against children, especially vulnerable groups of children and, including sexual abuse, particularly within the family, and at schools in order to assess the extent, scope and nature of these practices;
- (b) develop awareness-raising campaigns with the involvement of children in order to prevent and combat child abuse;
- (c) amend its legislation regarding the existing age limit set up for a special protection against all forms of violence against children;
- (d) evaluate the work of existing structures and provide training to the professionals involved in these types of cases; and

- (e) investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse, within the family through a child-sensitive inquiry and judicial procedure, in order to ensure better protection of child victims, including in their right to privacy.

5. Basic Health and Welfare

Basic health

39. The Committee welcomes the adoption of the Charter of the Rights of the Child in Hospital and takes note of the dramatic decrease of deaths of children resulting from road traffic accidents and of the number of children infected by HIV/AIDS. However, the Committee is concerned at the reluctance of children belonging to vulnerable groups to use health services.

40. The Committee recommends that the State party take proactive measures to facilitate access to health services to all children and to encourage parents to seek health services which are available for all children.

Adolescent health

41. The Committee is concerned at the high prevalence of psychological disorders among adolescents (especially eating disorders), the relatively high prevalence of abortions among adolescents and notably those from foreign origin.

42. The Committee recommends that the State party:

- (a) take all necessary measures to strengthen its mental health and counseling services, ensuring that they are accessible and sensitive to adolescent, and undertake studies on the causes and backgrounds of psychological disorders among adolescents; and
- (b) take further necessary measures to reduce the rate of teenage pregnancies through, *inter alia*, making health education, including sex education part of the school curricula, and strengthening the campaign of information on the use of contraceptives.

6. Education

43. The Committee welcomes the adoption of Act 9/99 which extends the duration of compulsory education (from 8 to 10 years), the various programmes to improve teacher's training but remains concerned at the high rate of dropout in upper secondary education; the variations in educational outcomes for children according to their cultural and socio-economic background, and to other factors such as gender (more girls than boys do obtain a degree in secondary education), disability, and ethnic origin. In addition, the Committee is concerned at the prevalence of bullying in schools and at the lack of consideration of the views of children within education.

44. The Committee recommends that the State party:

- (a) strengthen its efforts to curb the rate of dropout in upper secondary education;
- (b) take all necessary measures to eliminate the inequalities in educational achievement between girls and boys and between children from different social, economic or cultural groups and to guarantee to all children quality education;

- (c) take measures and set up adequate mechanisms and structures with the participation of children to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies; and
- (d) ensure that legislation throughout the State party reflects article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline.

7. Special Protection Measures

Unaccompanied minors

45. The Committee welcomes the establishment of the Committee for the Protection of Foreign Children and the specific reference made to the Convention in the Law 40/98 on immigration regarding access to health. However, the Committee remains concerned at the lack of adequate structures to receive unaccompanied minors; the lack of harmonization of the procedure dealing with unaccompanied minors in the various regions; the new provision under Act 189/2002 which

allows for the detention of undocumented immigrants; the implementation of Decree 113/99 which leads to an increase of repatriations without adequate follow-up; and the change which occurred in 2000 regarding residence permit for minors.

46. In accordance with the principles and provisions of the Convention, especially articles 2, 3, 22 and 37, and with respect to children, whether seeking asylum or not, the Committee recommends that the State party:

- (a) strengthen efforts to establish enough special reception centres for unaccompanied minors, with special attention to those who have been victims of trafficking and/or sexual exploitation;
- (b) ensure that the stay in these centres is for the shortest time possible and that access to education and health is guaranteed during and after the stay in the reception centre;
- (c) adopt as soon as possible an harmonized procedure in the best interests of the child to deal with unaccompanied minors throughout the State party;

(d) ensure that assisted repatriation is envisaged when it is in the best interests of the child and that a follow-up is guaranteed for those children.

Economic exploitation

47. The Committee notes the recent report of the National Statistic Institute regarding child labour in the State party and expresses its concerns at the high prevalence of this phenomenon in the State party.

48. The Committee recommends that the State party develop, on the basis of the recent study, a comprehensive strategy containing specific and well targeted goals aimed at preventing and eliminating child labour through, *inter alia*, awareness-raising activities and detection of causalities factors.

Sexual exploitation and trafficking

49. The Committee welcomes the adoption of Act 269/98 against the exploitation of prostitution, pornography, and sexual tourism targeting children and the establishment of an Inter-Ministerial Committee for the Co-ordination of the Government Action Against

Child Abuse and Trafficking in Minors and Women for Sexual Purposes. Nevertheless, the Committee remains concerned at the numbers of children who are trafficked for sexual purposes in Italy.

50. The Committee recommends that the State party:

- (a) strengthen its efforts to prevent and combat trafficking in children for sexual purposes in accordance with the Declaration and Agenda for Actions, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Sexual Exploitation;
- (b) monitor the implementation of Act 269/68, especially as it addresses the issue of the “demand side” of sexual exploitation; and
- (c) ensure that adequate resources, both human and financial, are allocated to policies and programmes in this area.

Administration of juvenile justice

51. The Committee notes that a reform of the juvenile justice system is pending. It is

concerned at the existing discrimination against children from foreign origin and Roma children within the juvenile justice system; the lack of independent structures to monitor the conditions of detention of children; and at the insufficient adequate training of the personnel involved in the juvenile justice system.

52. The Committee recommends that the State party, within its reform of the juvenile justice system, fully integrates the provisions and principles of the Convention, in particular, articles 37, 40, and 39, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juvenile Deprived of the Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

53. In particular, the Committee recommends that the State party:

(a) take all necessary measures, including through awareness campaign and

adequate training of the personnel involved, to prevent and eliminate discrimination against children from foreign origin and Roma children;

(b) allow periodic visits to the Reception Centres and Penal Institutes for Minors by impartial and independent bodies and ensure that every child deprived of his or her liberty has access to an independent, child-sensitive and accessible complaint procedure; and

(c) provide training on children's rights to those responsible for administering juvenile justice.

Children belonging to minority groups

54. While noting efforts undertaken by the State party in order to improve the situation of Roma children, The Committee remains concerned at their difficult social situation and their insufficient access to education and health services. In addition, the Committee is deeply concerned at instances of discrimination against this group of children, sometimes from the personnel of the State party themselves.

55. The Committee recommends that the State party develop in cooperation with Roma NGOs comprehensive proactive policies and programmes to prevent social exclusion and discrimination, and to allow Roma children to fully enjoy their rights, including access to education and health care.

8. Dissemination of Documentation

56. Finally, the Committee recommends that, in accordance with article 44, paragraph 6, of the Convention, the periodic report presented by the State party be made widely available to the public at large and that consideration be given to the publication of the report along with the written answers to the list of issues raised by the Committee, the relevant summary records of the discussion and the concluding observations adopted by the Committee following its consideration of the report. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

9. Reporting

57. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth reports in one consolidated report by 4 October 2008, the due date for the submission of the fourth report. The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

The World Organisation
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