



## **GREVIO: Evaluation of Italy**

**Written contribution by BeFree Cooperativa Sociale  
sulla violenza contro le donne, il traffico di esseri umani  
e la discriminazione**

**October 30, 2018**

BeFree Social Cooperative Against Violence and Discrimination was launched on February 27, 2007 to counter violence against women, gender-based discrimination, inequality and trafficking in human beings. To this end, BeFree's provides services, advocacy, training, education, and carries out outreach activities. BeFree's objectives are the promotion and protection of women's human rights, as well as the empowerment of both victims and protection actors. It aims at ensuring that gender rights are mainstreamed in policies and actions. It works to change social perceptions of gender roles and dynamics in order to promote a culture respect of diversity.



## SUMMARY

This report focuses on the application of specific norms of the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Convention) by the Italian Government and local administrations that, according to the principle of subsidiarity, share responsibility with national governments in fulfilling international obligations. Such application has been observed by BeFree in the course of its operations and advocacy countering violence against women, trafficking in human beings and discrimination.

In particular, this report analyses the implementation of the law countering violence against women (Law 119/13)--and partially implementing the Convention--as well as obstacles for survivors of gender-based violence to access justice. Further, we discuss how practices stemming from two different models of care in hospital emergency rooms affect survivors that are in dire need of medical attention. The report investigates hurdles that trafficked women for the purpose of sexual exploitation encounter in obtaining protection. Finally, we focus on threats of closure and dismantlement of physical spaces that women have created and run are currently facing on the part of local authorities.

At the time of this writing (October 30, 2018), two new legislative developments, reflecting the ethos and orientation of the current government, cast a very troubling shadow over the opening of the democratic space in the country and in securing respect for human rights, including women's human rights. The first pertains to the so-called security package which include provisions that severely curtail rights of asylum seekers and migrants in Italy. We briefly discuss some of these provisions in the section on trafficking in human beings. The second is a bill--still on the drawing board--which ostensibly pertains to the matter of custody and support of children in divorce/separation law, but that undermines women's rights in general and prefigure a social regression in parental relationships, as well as in rights of the children (the so called Pillon Bill). We provide a brief description of its most worrisome provisions that, if left standing, will be in violation of both domestic and international law regarding violence against women. Such new laws are either still untested or still in draft form, thus their effects cannot be properly evaluated at this time. In the context of this report, we are therefore simply sounding an alarm bell and will keep monitoring the evolution of this legislation. We stand ready to assist GREVIO with further analyses.

Relevant to this report's discussion is also the action undertaken on October 22, 2018 by the United Nations. In a letter to the Italian government, taking note of the alarm raised by the Pillon Bill and of threats against women's spaces, Dubravka Šimonović Special Rapporteur on violence against women, its causes and consequences, and Ivana Radačić Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, asked the government to clarify these matters within 60 days by responding to a series of detailed points and issues. The government's response and the Special Rapporteurs' own findings and concerns will be discussed at the next session of the United Nations Human Rights Council. We wish to draw the attention of GREVIO to this missive that can be found at:

[https://www.ohchr.org/Documents/Issues/Women/WG/Communications/OL\\_ITA\\_5\\_2018.pdf?fbclid=IwAR0BA23ZG3Eljc9sldRAoggpWFkcFq9KrWYdAi3zb4o18LvHH4WpkW0\\_cc](https://www.ohchr.org/Documents/Issues/Women/WG/Communications/OL_ITA_5_2018.pdf?fbclid=IwAR0BA23ZG3Eljc9sldRAoggpWFkcFq9KrWYdAi3zb4o18LvHH4WpkW0_cc)

## **Highlights of discussion in the report:**

### **Law 119/13**

This law does not introduce new criminal typologies. Rather, it focuses on strengthening responses and sanctions to contrast gender violence stemming from a relationship between a victim and a perpetrator. The Italian law was conceived within a security, rather than a human rights framework. Repression and punishment, rather than prevention and protection, are viewed as the pre-eminent means to address the social scourge of gender violence. This approach overshadows the need affirmed in international law of removing the obstacles that prevent the effective enjoyment of women's human rights and implementing policies and measures aimed at their fulfillment, such as understanding and correcting legal and institutional shortcomings, countering prejudices and gender discrimination, implementing effective partnerships with civil society, allocating adequate resources, training front-line operators, including law enforcers and actors in the judicial system as a whole, and gender mainstreaming in all government policies and actions.

In this framework women are regarded as inherently “weak” parties, rather than as individuals made vulnerable by violence (individual and social) and its underlying causes. Thus, violence against women is considered an “emergency” not as a phenomenon engendered by structural and systemic discrimination.

In law enforcement practice there persist discrepancies regarding how complaints of violence are received, processed, and transmitted to the public prosecutor’s office. This is also due to a lack of relevant training. These factors negatively affect complainants. Discriminatory decisions and practices persist both in criminal and civil courts. In criminal cases, gender-based violence is still largely underestimated. Judicial decisions often reflect sexist prejudices and stereotypes. This exposes women to re-victimization.

### **VaW in hospitals’ emergency rooms**

In recent years, the concept of a so called Code Pink (Codice Rosa)—that is, paths of protection of women victims of VAW who arrive at hospitals’ emergency rooms--has gained traction in public discourse and practice. This model, however, is not in line with the Convention. Code Pink was not conceived specifically to address gender-based violence. It does not rely on gender operators, unduly shifts the burden of facing cases of violence on medical staff not adequately trained on gender violence, and heavily relies on institutional mechanisms (both in law enforcement and health facilities) to counter such violence. In contrast, and in accordance with international recognized standards, BeFree has advocated and implemented a model with its own help desk which employs personnel with specific expertise in identifying and countering violence against women and in providing support to the survivors. BeFree staff interacts with triage operators and trains them as well as other medical personnel and health workers (doctors, midwives, nurses) in correctly interpreting indicators of VaW

and predisposing attentive and competent support and care. Such procedures also mitigated the ever-present risks of re-victimization by attempting to raise an awareness in victims while, at the same time, offering them exit paths from violence. Hospitals' emergency rooms represent a crucial point of the inter-institutional network. Their staff must include gender and anti-violence operators, who are the real experts in the matter, in order to be able to identify cases of violence, competently support victims and encourage them to pursue appropriate paths, particularly through gender-oriented and gender-experienced operators, as envisaged by the Convention.

### **Trafficking for the purpose of sexual exploitation**

The vast majority of women trafficked for the purpose of sexual exploitation to and in Italy apply for international protection as asylum seekers. The vast majority of them are Nigerian and have suffered violence, including rape and torture, in the course of their migratory trajectory. They are instructed by the traffickers themselves to claim asylum in order to avoid or forestall their expulsion, thereby making it more difficult for them to be identified as victims of trafficking. However, once the asylum request process has been put in motion, traffickers have no interest in ensuring that it comes to a satisfactory conclusion. Rather, the uncertainties of a status limbo make their victims more vulnerable and more dependent on traffickers' networks.

It falls upon the Territorial Commissions (TC) -- semi judicial bodies-- to hear asylum seekers cases and grant international protection. Thus, the work of the TCs is crucial in properly identifying survivors of human trafficking and in fulfilling the requirements of the Convention by ensuring that the rights of survivors of trafficking are upheld. Many requests are denied when women are forced to narrate fabricated stories which are often very similar to one another and are based on traffickers' knowledge of the asylum system in Italy and what, in their view, could facilitate favorable results. Only when anti-trafficking operators gather a true rendition of the facts on the part of the trafficking survivors can a second audience with the Commissions be obtained. Recently, however, some Commissions have come to recognize such implausible stories as indicators of trafficking.

A range of shortcomings persist. In BeFree's observations, all too often the TCs display excessive intrusiveness into the lives and circumstances of trafficked women, and their requirement of successive interviews often unduly prolongs adjudication of cases. Further, their rigid application of standard procedures may hamper forms of resistance and paths to empowerment that many women implement outside institutional channels.

### **Women's spaces**

The survival of women's hard won spaces in Rome now under threat is a key issue with nation-wide implications and may set an example for the rest of the country. Placed at the political and geographic center of the country, women's organizations in the Capital have often played a catalyst role in women's advancement in Italy. Actions that place them in jeopardy promise to reverberate negatively in other parts of the country.

Women's facilities under threat are part of public real estate patrimony or belong to business concerns in which local administrations hold preponderant ownership or a relevant interest. These spaces have

been either rented out under specific agreements or have been occupied by women's organizations for the benefit of the communities they serve. Local administration authorities now want to cash in on these facilities failing to recognize their value beyond their financial and real estate aspects.

The question is and will remain a political one, however. At its core, it has the non-negotiable principles of equality, non-discrimination and justice enshrined in the international obligations Italy has willingly underwritten. Consequently, the outcome of the cases of women's spaces represents a litmus test for how "public interest" is interpreted. At stake is whether Italy and its institutions of government have the determination to forego in part their pecuniary claims in order to better enhance citizens' common good, as well as to comply with the substantive implementation of national and international law.

## **APPLICATION OF LEGISLATIVE MEASURES AND ACCESS TO JUSTICE**

### Chapters V and VI

#### **LAW 119/13**

Law 119/13 does not introduce new criminal typologies. Rather, it focuses on strengthening responses and sanctions to contrast gender violence stemming from a relationship between a victim and a perpetrator. The very existence of such a relationship should trigger heavier penalties against the perpetrator/s irrespective of marital status and/or co-habitation. The law, however, does not define precisely what constitutes an "affective relationship". Thus, it leaves room for different interpretations by victims and perpetrators, as well by the courts, thereby potentially restricting the consideration of aggravating circumstances solely for cases in which couples are well established and regarded as such.

The law also introduces additional aggravating circumstances, including violence perpetrated in the presence of a minor, against a minor, and against a pregnant woman.

Other innovations concern:

- The call for an anti-violence plan of action embracing prevention, education and training measures;
- Free legal services for women victims of stalking, domestic violence and genital mutilation; and
- Protective measures in line with the European Directive on the Protection of Victims of Crime. For example, before and during court proceedings, the victim must be informed of her right to obtain free legal services. She can also be notified upon request of any changes regarding restrictions, non-custodial measures ( i.e., "stay –away from" orders, restriction of movements and electronic surveillance) and/or coercive measures against the perpetrator. Critical issue in this regard concern not only the lack of automatism of notifications, but also that victims are not informed when restrictive requests are rejected or when they expire, and not when

the perpetrator is detained for offences not related to the specific case of violence against the victim, thereby exposing women to potential risks.

## **ADDITIONAL INNOVATIONS OF THE LAW AND THEIR SUBSTANTIVE PITFALLS**

### Partial Irrevocability of a Lawsuit for Stalking:

Once the criminal justice procedures are put into motion with the victim's lodging of a formal complaint, the law allows for a change of mind and a consequent request of withdrawal of such complaint only before a judge and only for if violence is deemed not-serious and occasional. Thus, the law limits the freedom of choice of the victim. This approach also gives preeminence to the interest of the criminal justice system in establishing responsibilities rather than the interest of the victim in satisfying her personal and emotional needs, as well the possibility of a change of mind.

Mandatory arrest in flagrante delicto of domestic violence and stalking. The difficulty here is proving the connection between the perpetration of a flagrante delicto to what is often the perpetrator's long-standing and often executed plan of inflicting harm. Such plan may be hardly discernible to law enforcers intervening and collecting evidence in a situation of flagrancy.

### Protected hearings

Protected hearings of an adult victim take place on request for such procedures in manners determined by a judge on a case-by-case basis. Such protective measures, however, are not applied in the course of preliminary investigations nor when rendering testimony outside courts.

### Schedule of Preliminary Investigations

Preliminary investigations for violence and stalking must be completed within a year. The deadline for investigations may be extended only once. This approach carries the risk of unduly reducing the scope and time frame of investigations thus hampering opportunities to acquire further evidence in support of charges.

### Residence Permit for Victims of Domestic Violence

The renewal of the residence permit for foreign victims of violence can not be granted for a duration longer than that of the permit previously obtained. Nor is there any specific provision regarding the extension of work permits, or the conversion of residence permits into work permits in cases of domestic violence. Victims are forced to pursue formal complaints through the judicial system in order to obtain residence permits even when they are unwilling to press charges. No alternatives are provided. The character of such provision lends itself to interpretations that may be too general (eg, violence must consist of one or more serious and not episodic acts, to which must be added the concrete danger for the psycho-physical safety of women) and the duration seems to refer to the situation of danger. Moreover, the discretionary withdrawal of a residence permit and the expulsion of a foreign offender may amount to discrimination and breach of the principle of equality before the law, in that such decisions may be reached even in the absence of a definitive conviction (an approach that is not applied to nationals).

## **COMPARISONS WITH INTERNATIONAL LAW: SHORTCOMINGS**

Law 119/13 was conceived within a security, rather than a human rights framework. Repression and punishment, rather than prevention and protection, are viewed as the pre-eminent means to address the social scourge of gender violence. This approach overshadows the need affirmed in international law of removing the obstacles that prevent the effective enjoyment of women's human rights and implementing policies and measures aimed at their fulfillment, such as understanding and correcting legal and institutional shortcomings, countering prejudices and gender discrimination, implementing effective partnerships with civil society, allocating adequate resources, training front-line operators, including law enforcers and actors in the judicial system as a whole, and gender mainstreaming in all government policies and actions.

In this framework women are regarded as inherently “weak” parties, rather than as individuals made vulnerable by violence (individual and social) and its underlying causes. Thus, violence against women is considered an “emergency” not as a phenomenon engendered by structural and systemic discrimination.

## **ACCESS TO JUSTICE**

### **CRIMINAL LAW PROCEEDINGS**

In law enforcement practice there persist discrepancies regarding how complaints of violence are received, processed, and transmitted to the public prosecutor’s office. This is also due to a lack of relevant training. These factors negatively affect complainants. Often, they also engender inadequate case-reports, as the information provided in police reports may be patchy, superficial and lacking sufficient investigative elements that may support the application of protection measures, including remand orders. Moreover, such reports tend to stigmatize women and treat individual cases with a troubling one-size-fits-all approach. On many occasions, law enforcers called on the spot of the violence (typically homes) tend to frame and report their interventions as “calls to break a fight or a quarrel” with the aim of reconciling the parties involved, rather than as actions to counter gender and domestic violence, collect testimony and evidence to that effect, report accordingly, and protect the victim.

In the justice system’s probes, there is a lack of uniformity and consistency regarding the timing and duration of protection measures, including stay-away and other restraining orders. Thus, such orders may expire during the probe’s process exposing victims to the risk of additional violence. Further, the suspension of protection measures for women and minor children to accommodate the offending parent’s visiting rights may also carry negative consequences: it may expose to trauma those minors who have witnessed violence and who instead should be afforded the additional protection envisaged by law; and it may expose minors to be used a tools of pressure and blackmail against their mothers.

The rights of the victim/offended party are also undermined when, in the course of preliminary investigations, the offender enters into a plea bargaining agreement which the victim cannot impede. Her consent to such procedure is neither allowed nor requested (Article 447 of the Italian Civil Code).

Training and awareness of legal practitioners in the matter of gender-based violence is patchy and it is not uniformly underpinned by a gender-oriented approach.



Discriminatory decisions and practices persist both in criminal and civil courts. In criminal cases, gender-based violence is still largely underestimated. Judicial decisions often reflect sexist prejudices and stereotypes. This exposes women to re-victimization. [5].

Speedy and timely access to justice is hampered by the very organizational structure of judicial offices. This is also due to the fact that EU Directive 2012/29 has not been wholly absorbed. The EU directive requires States to provide competent individual assessments of the situation and needs of each victim, and to ensure that victims are involved at every stage of criminal proceedings.

It is imperative that every form of male violence against women be recognized as such and in all its forms, including sexual harassment in the workplace, on the web, and through social media. It is also necessary to ensure access to justice to foreign women who are victims of violence, regardless of their legal status on the Italian territory or whether they are willing to press charges against perpetrators and ensure that they obtain a residence permit independently from that of the offenders.

In the course of criminal procedures, there is a need to better protect the rights of the offended persons. In this regard, the following is of note:

- A failure to apply art. 132 bis disp. Att. Cpp, covering the issue of "Training of actors involved in court proceedings", which gives absolute priority to the adjudication of crimes under articles 572 and 609-bis to 609-octies and 612-bis of the criminal code aimed at avoiding that the victim of the crime is exposed to prejudice;
- A lack of tools and equipment for audiovisual recording in criminal proceedings involving an adult victim;
- EU Directive 2004/80 / EC on compensation for victims of crimes has not yet been implemented. Thus, women have no guarantees of effective and adequate compensation from the State, despite the fact that a dedicated fund has been predisposed in 2015.

With regard to specialized legal assistance, the recognition of the right of victims of gender-based violence to free legal aid-- irrespective of their income-- has not been matched either by an adequate allocation of dedicated funds or by an efficient management of available resources. These financial and organizational gaps have put an undue and discriminatory burden on specialized lawyers who are left to face the social and financial cost of assistance. Moreover, it is of concern that free legal aid-- irrespective of income-- is not envisaged in civil and juvenile procedures.

## **MIGRANT WOMEN**

Article. 4 of law 119/2013 provides for police authorities - acting on the favorable opinion of the judicial authority or on the judicial authority's own initiative -to issue a residence permit to a foreign woman independently from her status (or that of the violent partner) when situations of domestic violence are ascertained or in the face of concrete threats to a woman's safety and well being.

As opposed the the two tracks envisaged for migrant women who were victims of trafficking in human beings or victims of grave violence to escape such conditions violence (Art. 18, Law 286/98 Testo Unico Immigrazione), that is, the social path and the legal path, Art.4 of Law 119/2013 applies only to cases

in which victims press charges against perpetrators thus leaving no other option even when women do not wish to pursue their aggressors. Moreover, Art.4 refers only to cases of systematic violence. Clearly, such norm restricts the field of application and thus, the scope of protection in breach of the Convention.

## **CIVIL AND JUVENILE PROCEEDINGS**

As noted in the Introduction, legislation now on the drafting board pertaining to children of separated/divorced parents raises grave concerns. In particular, Bill n. 735 Rel. (the so called Bill Pillon), introduces provisions that, if left standing, would lead to severe normative regression fueling gender inequalities and discrimination in blatant disregard of our existing legal, political, social and economic systems, as well as international law. The Bill is an attempt to redefine family relationships to the detriment of women and children. Specifically, the Bill:

- Farms out jurisdiction in a matter as complex and delicate as that of family law that concerns the daily life of people. In disregard of the Italian Constitution, the Bill confines the figure of the natural judge to a residual and extremely marginal role, and bestows more powers on private, non-specialized actors, who are often unrelated to the judicial system, such as parenting mediators and coordinators. Such actors are required to intervene even if the separation/divorce was amicable, and both spouses have to shoulder the cost of these services. This provision is in violation of the Convention. Further, it delineates a discriminatory justice system in which the non-wealthy may be forced to re-examine their decisions in order not to incur unsustainable costs.
- Restores the parents' right to be the exclusive decision-makers regarding the future of children. The Bill relays on the long obsolete concept of "parental powers" (rather than "parental responsibility") reintroducing the concept of "planned parenting" as an instrument of social control. In this conception and in violation of international law, including the UN Convention on the Rights of the Child, minors would be effectively excluded from any decision affecting them, thus making them effectively passive rights-holders.
- Bolsters the erroneous and instrumental overlapping of concepts of intra-family conflict and violence in family law. Thus, the Bill undermines the protection of women and child victims of violence thereby exposing them to risks to their psycho-physical well being. This approach is also in clear contrast with the principle of the pre-eminent interest of the child.
- Introduces two dangerous presumptions ex lege: that of the falsity of situations of endo-family violence and that of the existence of parental alienation. In this regard, the Bill envisages instruments of intervention which are discriminatory.
- Supports unquestioningly the principle of bi-parenting (or equal access to children by both parents), effectively ignoring and/or condoning the conduct of the abusive parent.
- Overlooks inequalities and gender discrimination in the labor market and wage earnings, putting an overwhelming burden on the economically weaker parent by requiring equal financial support for minors and by scrapping the concepts of alimony for child support and that of "family home".

Clearly, the pre-eminent goal of this provision is not the enhancement of the relationship between fathers and children, but the protection of a father's patrimony and real estate.

- Reinforces numerous gender stereotypes and prejudices, such as the presumptions that women falsely accuse their partner of violence in order to draw benefits in civil cases of separation and divorce; that women use minors against fathers; that the economically weaker parent (mostly the mothers) uses the economic contribution to the maintenance of the minor paid by the other parent for personal purposes.

Bill Pillon and related legislation will have to pass the Parliament's scrutiny and have been already criticized by women's organizations and political actors.

What would be needed, instead, is effective legislation to ameliorate shortcomings in existing law and practice . These shortcomings are examined below.

With regard to Article 31 on Custody, Visitation Rights and Safety of the Istanbul Convention, we note:

- A failure to recognize inter-family violence as a ground for denying shared custody or, at least , a shared exercise of parental responsibility.
- Of concern is also the current overlap of interventions of the civil and the juvenile jurisdiction, a byproduct of changes in art. 38 of the Disp. of Att.ne (Implementing legislation) of the civil code. Although Supreme Court rulings have sought to reduce cases of overlapping, problems persist when a juvenile proceeding precedes a civil trial, a circumstance that occurs when -- in application of art. 609 decies c.p. introduced by Law 119/2013--law enforcers have the obligation to communicate to the Juvenile Court cases of inter-family violence;
- A lack of effective co-ordination between civil, criminal and juvenile courts at various procedural stages (acquisition of criminal records before the issuance of presidential measures and throughout procedures). There is a need to systematize evaluation procedures among the various actors involved, such as technical experts who act in support of courts on issues of minors' welfare, and reports by social services, as well as a need of effective harmonization of criminal and civil protection measures. In this regard, the incompatibility of the timing of civil and criminal proceedings must be underscored.
- Both in civil and juvenile proceedings, there are gaps and inadequacies related to evaluations of parental skills. These inadequacies are reflected in mediation practices, social services inquiries, CTU, support for parenting skills, as well as in a lack of proper recognition of inter-family violence and in an inappropriate use and/or mis-interpretation of terms such as, for example, "conflict", and "assisted violence" which are often considered synonymous .
- There is a lack of training in gender-based violence of the pertinent operators, including social workers. Of concern are also shortcomings of the institutions and bodies involved in justice proceedings, such as social services, support services for parenting, and so called "neutral spaces", that is, protected environments . The absence of specialized support in gender/domestic violence and monitoring structures is also troubling.
- Measures pertaining to "stay away" orders in civil procedures, which were introduced in Italian

legislation in 2001, are scarcely applied. Women are frequently deemed responsible for the absence or poor quality of relationships between the father of their child/children and thus often admonished and sanctioned if they hamper visits by the other parent. This orientation by the courts, which often uncritically reflects or is grounded in questionable psychological assessments undertaken during a trial by operators with no gender violence expertise, is discriminatory. In fact, such rulings stigmatize women as hostile or alienating mothers without the benefit of thorough and solid probative evidence. Moreover, they ignore the will of minors involved and require children to undertake psychological counseling during which they are forced to meet their father. Rarely are a father's neglect or negligence in supporting and assisting his child/children addressed and punished.

## **CARE FOR SURVIVORS IN HOSPITAL EMERGENCY ROOMS: A COMPARISON BETWEEN TWO MODELS**

### **Arts. 9, 20, and 25**

In recent years, the concept of a so called Code Pink (Codice Rosa)—that is, paths of protection of women victims of violence against women who arrive at hospitals' emergency rooms—has gained traction in public discourse and practice. This model, however, is not in line with the Convention. Nor does it fulfill the requirements of the national *Guidelines* on centers on violence against women and shelters established by the Conference State-Regions. In order to clarify the rationale of BeFree's alternative model described below and BeFree's critical positions on Code Pink (CP) it is important to briefly describe the genesis and evolution of their respective formulations.

In the past decade, hospitals' emergency rooms have been considered strategic places to intercept those women victims of violence (VaW) who had not previously asked help from institutional networks or from nongovernmental anti-violence centers. This led to efforts to facilitate identification of women victims of violence when they reach hospital facilities.

In 2009, BeFree created a dedicated help desk (Sportello Donna) at the San Camillo-Forlanini Hospital in Rome (one of the largest in Europe). The help desk is located at the emergency room of the hospital, since emergency rooms are often first ports of call in violence cases. In accordance with international recognized standards, the BeFree help desk is staffed with personnel with specific expertise in identifying and countering violence against women and in providing support to the survivors. BeFree staff interacts with triage operators and trains them as well as other medical personnel and health workers (doctors, midwives, nurses,) in correctly interpreting indicators of VaW and predisposing attentive and competent support and care.

Such procedures also mitigated the ever-present risks of re-victimization, by attempting to raise an awareness in victims while, at the same time, offering them exit paths from violence. The central tenet of this model was to place gender operators at a crucial point for survivors of VaW thereby bringing to

the surface cases that otherwise might have remained unknown and unaddressed and, in the process, training health operators and developing local support networks. This approach was predicated on what we consider indispensable methodological principles: prioritizing the well-being of women and their consent, and respecting and promoting their self-determination and empowerment.

Women who reach hospital emergency rooms in the moment of dire need are largely not in the same condition as those that request the service of anti-violence centers. The former often have not yet decided to exit the situation of violence. Many disguise violence by attributing their injuries to domestic accidents, such as accidental falls.

Persuading them to recognize themselves as "victims of gender-based violence" is a complex operation, which requires great expertise and long-term support that first responders in emergency rooms are typically not able to provide. That is why to implement a gender-sensitive approach in emergency rooms, specific guidelines are needed. They must provide criteria of effectiveness and adequacy and facilitate synergy between emergency rooms and other hospital staff and gender specialists. To this end, the practice and training that BeFree has put in place and have yielded best results over time, include:

- Triage operators refer suspected cases of gender violence to gender operators on the spot, encouraging women --with non-intrusive methods-- to avail themselves of such services.
- The user goes personally to the site of the service, or the operator is called to the place of medical treatment, when the condition of the woman requires it.
- As soon as feasible, a path of escape from the situation of violence is proposed to women. (In our experience, the percentage of users who accept the proposed route is around 75%. Among these, over 35% press formal charges against the perpetrator, in fact tripling the national average of women victims of violence who choose to do so).
- Typically, each woman is invited to attend three meetings with an operator and, if so requested, receives free legal counsel regarding possible legal pursuits.
- Housing solutions far from the location of violence are also sought and when necessary in other parts of Italy in particularly serious and dangerous cases. To this end, continuous interaction with a variety of social and health services, law enforcement agencies and anti-violence centers networks throughout the national territory are indispensable.
- Hospital beds must be made available for women who have overcome their immediate medical emergency, but need a period of reflection to pursue their exit from violence or when prompt removal from the situation of violence is urgent and viable alternatives are not available.
- Accurate and dis-aggregated statistical data must be collected and analyzed.

Conversely, "Code Pink", abiding by a different rationale, includes critical aspects, such as:

- The Code does not respond to a gender approach. It is applied to all the victims of aggressive behavior, including elderly people mistreated by care givers or LGBTQ persons victims of homophobia. It is therefore predicated on violence generally, and not specifically on gender violence.
- It puts an excessive burden on emergency medical personnel who are already overworked and increasingly understaffed. It assumes that such staff can treat women who have resorted to

medical care in an emergency with a gender-sensitive approach which typically health providers in emergency rooms are not trained for. This perspective is in violation of international guidelines, which require a gender-oriented approach with victims of violence steeped in the practice of political relations among women.

- It is based on a strong relationship with law enforcement institutions and courts with a strong advocacy towards women to press charges against perpetrators. This approach frightens and destabilizes women, who are often accompanied to the emergency room by the abuser himself. Their fear is well-grounded, since most of the women killed by their partners had pressed charges against the perpetrator and had not received ensuing adequate protection. This approach also tends to read VaW as a vulnerability requiring top-down tutelage and assistance. It also envisages paths of exiting from VaW and related support that are solely managed by institutional networks and facilities, and that views nongovernmental Centers against Violence (CAVs) as mere shelters, rather than catalysts of women's empowerment and choice.
- Over the years, the Code has never produced objective data on women's access to services, on the paths activated to exit and counter violence and on their outcome. In the absent of relevant statistics, monitoring and follow up have also been wholly inadequate.

The favor that the model "Code Pink" has gained, may stem from factors other than its supposed merits and efficacy. For example, the involvement of law enforcement agencies and the courts seem to reflect a bias towards "institutional" solutions rather than towards the experience of gender-oriented civil society groups. Further, the cost involved in implementing the code are minimal if compared to those required for the services of specialized operators and those related to the development and support of a multi-layered approach involving a variety of actors, networks and dedicated training.

We believe that hospitals' emergency rooms represent a crucial point of the inter-institutional network, that their staff must include gender and anti-violence operators, who are the real experts in the matter, in order to be able to identify cases of violence, competently support victims and encourage them to pursue appropriate paths, particularly through gender-oriented and gender-experienced operators, as envisaged by the Istanbul Convention.

## **TRAFFICKING IN HUMAN BEINGS: THE WORK OF THE TERRITORIAL COMMISSIONS**

### **ARTICLES 4, AND 59-61**

A foreign person who enters Italy has the right to apply for international protection, as established by the European Directive 83 of 2004 implemented in Italy by Legislative Decree 251 of 2007. The application is then examined by the competent Territorial Commission (TC) --a semi judicial body-- which, after hearing a case, may grant refugee status, or a subsidiary form of protection. In 1998, Italy has introduced an additional and residual form of protection, known as humanitarian protection. Refugee status is granted according to the Geneva Convention and entails a residence permit for a renewable 5-year term.

Subsidiary protection is bestowed when a person does not fulfil the requirements of the Geneva Convention, but would suffer serious harm if returned to the country of origin. A 5-year residence permit is issued in these cases and can be renewed upon verification of the persistence of risk factors. Humanitarian protection is obtained for reasons of a specific humanitarian nature, such as health or age conditions, threats or risk of violence or stemming from political instability, famines or environmental disasters. The duration of such protection varies, although in practice it has been extended for a maximum of two years renewable. Today, such humanitarian protection is at serious risk of being gravely restricted. On September 24, 2018, the Council of Ministers approved the so called decree on migration. Although at the time of this writing (30 October 2018), specific provisions of the such decree are still unclear, it is unquestionable that this decree severely curtails rights in violation of the Italian Constitution and international law.

As noted above, one of its most troubling provisions pertains to the scrapping of humanitarian protection that could now be granted only in special cases of asylum seekers, such as those who stand out for "acts of particular civil value", victims of domestic violence or serious work exploitation, people in need of medical care, people who come from a country that is in a temporary situation of "contingent and exceptional calamity".

A vast variety of civil society organizations and faith-based institutions have pointed out how the effects of the decree will push further underground asylum seekers, prolong administrative detention, benefit traffickers, and further exacerbate social tensions.

Available data already give an idea of the scale of violations that new decree will trigger, since in 2017 a majority of asylum seekers were granted humanitarian protection. According to ISMU (Foundation for Initiatives and Studies on Multi-ethnicity), out of the 81 thousand requests for asylum examined in Italy in 2017, 16.8% yielded international protection: 8.4% of asylum seekers have obtained refugee status, 8.4% received subsidiary protection, while 24.7% of asylum seekers qualified for humanitarian protection.

The vast majority of women trafficked for the purpose of sexual exploitation apply for international protection as asylum seekers. The vast majority of them are Nigerian and have suffered violence, including rape and torture, in the course of their migratory trajectory. They are instructed by the traffickers themselves to claim asylum in order to avoid or forestall their expulsion, thereby making it more difficult for them to be identified as victims of trafficking. However, once the asylum request process has been put in motion, traffickers have no interest in ensuring that it comes to a satisfactory conclusion. Rather, the uncertainties of a status limbo make their victims more vulnerable and more dependent on traffickers' networks. Women are thus forced to narrate fabricated stories which are often very similar to one another and are based on traffickers' knowledge of the asylum system in Italy and what, in their view, could facilitate favorable results. Only when anti-traffickers operators gather a true rendition of the facts on the part of the trafficking survivors can a second audience with the Commissions be obtained.

The work of the TCs is crucial in properly identifying survivors of human trafficking and in fulfilling the requirements of the Istanbul Convention by ensuring the rights of survivors of trafficking are upheld.

For these reasons, the following analysis focuses on the operations of TCs and is based on direct observations by BeFree and experiences rooted in the practice of the migration legislative framework established since 1998. Clearly, the new decree will affect the whole protection system in Italy. Thus,

its effects will need to be closely monitored and re-appraised in the light of application.

### **Gender-based violence, Migrant Flows and Human Trafficking: Preliminary Considerations**

In Italy, male violence against women and trafficking in human beings have been considered two distinct phenomena, both by organizations that counter these scourges as well as government institutions engaged in contrasting them. Consequently, two different national plans of action (one on gender violence, and the other on human trafficking) are currently in place. Yet trafficking for the purpose of sexual exploitation is one of the many forms of violence against women. It is not by coincidence that more than 90% of trafficked persons are women and girls who seek to escape gender-related ill-treatment and discrimination, including the feminization of poverty, domestic or communal violence, forced marriages, unequal power relations, and social inequality, including disparities in access to economic and work opportunities, health care, and education.

For women survivors of trafficking in Italy, there are currently two pathways to obtaining residence permits and with these the possibility or rebuilding their lives. These pathways are afforded by art. 18 of Law 28 286/98 and through access to international protection.

### **Territorial Commissions and Trafficking in Human Beings**

The UNHCR Anti-Trafficking Guidelines for Territorial Commissions ("The identification of victims of trafficking among applicants for international protection and referral procedures") aim at a "correct and early identification of victims of trafficking", as well as identifying and establishing "an appropriate referral mechanism to achieve coordination and collaboration between the commissions and the anti-trafficking bodies in order to ensure adequate protection". This can be achieved through the development of "standard operating procedures to be adopted during the process of bestowing international protection".

These Guidelines represent an important starting point in the protection of women survivors of trafficking. However, in their concrete applications they can't fully do justice to the complexity and many facets that characterize the stories of women survivors of trafficking. Their experiences are different and are characterized by individual strategies of resistance to overcome, violence and exploitation.

When trafficking indicators appear in a woman's narrative, the Guidelines envisage the possibility for the Commission to request the woman's consent to consult and be supported by anti-trafficking organizations. Once such consent is granted, the decision of the CT on the case is suspended for four months in order to allow sufficient time for the anti-trafficking organization to study and report on the case. This report is merely informative for, but not binding on, the CT's decision. The suspension period is useful in those cases in which survivors, for a variety of reasons including fear of retribution, have not been able or willing to relate their stories. However, women who have already related their



stories and have made plans for their lives may perceive the suspension as punishment, since such suspension forces them to postpone their plans and relegates them to a waiting limbo. The result is that women survivors of trafficking remain more than other migrants in these emergency centers which do not provide adequate well being conditions and where women are exposed to re-victimization and hampered in both their seeking support and pursuing their life plans. This practice is in violation of international law and reinforces an outcome in which justice delayed is justice denied.

The lengthening of processing time of asylum requests is a major hindrance to the provision of support for survivors of trafficking. In this perspective, the requirement of subsequent interviews by the CT is applied too rigidly. For example, why should contact with an anti-trafficking organization and the consequent suspension time and follow-up interview/s be required when either the survivor took the initiative to present the case herself or when it was brought before the CT by an anti-trafficking organization in the first place? And why should this requirement persist even when the survivor decides to pursue a path different from international protection, namely that afforded by art. 18 of Law 286/98? The paradox becomes even more evident when a woman does not give her consent to be put in contact with an anti-trafficking organization and is, nonetheless, forced to appear several times before the CT, and accept a suspension time with the likely consequences of psychophysical harm.

An additional and very troubling issue is some CTs' unduly inquisitive approach into the conduct of women residing in migrant centers, particularly regarding whether they are still providing sexual services, or how they employ their personal time. This attitude both stems from and reinforces a culture of suspicion and stigmatization, as well as prejudices concerning women's supposed and uncritical compliance with somebody else's wishes and instructions. Those are the very same "characteristics" of perceived passivity and subservience that made them desirable "sexual objects" to begin with. These women, and consequently anti-trafficking organizations, are asked for information that is not relevant to their experience of trafficked victims, especially when they have escaped such condition, survived it, and are concentrating on strategies to rebuild their lives.

Moreover, the continuous updates on cases required by the CTs risk to relegate anti-trafficking operators to a role of mere "controllers" and "enforcers" or to being perceived as such by trafficking survivors. This is a perception that effectively hampers or, at least, complicates the construction of a meaningful relationship of trust between survivors and operators that is indispensable to account for the experience of trafficking, to overcome it, and mitigate its consequences.

We recognize that there is a difference between an asylum seeker as defined in international law and protection systems, and a woman who has survived trafficking. In Italy a refugee should be "safe" from the dangers from which she escaped. Conversely, a trafficking survivor is still exposed to the exploitation which she has tried to escape, since the exploitation does not cease or is meant to be carried out in the countries of transit and destination.

Dangers of exploitation in Italy must be taken into serious consideration. However, if approaches that are not gender-oriented and do not include empowerment strategies are employed, re-traumatization looms large and entails disastrous consequences. These affect not only the individual survivors. They

also bolsters perceptions of women as powerless victims, incapable of agency and even in need to be saved from themselves.

A state of danger is to be assessed on the basis of the perception of women themselves. All too often there exists a gap regarding perceptions of danger by operators and the institutions involved and those of survivors. And all too often the latter's perceptions are not duly taken into account. Some survivors, for example, do not feel the need to be residing in protected structures. This should not relegate them into the "humanitarian protection" category, while other women who have chosen to live in protected structures and/or have pressed charges against traffickers are afforded stronger forms of international protection.

CTs seem to be overly concerned with the risk of granting forms of protection to women who will then continue to prostitute themselves. They dread that their decisions may facilitate traffickers. In fact, while traffickers have a pre-eminent interest in their victims' access to protection upon arrival and in forestalling repatriation, they have no interest in ensuring more stable forms of support and paths to regular status for trafficked women. It is indeed an "irregular" or "not-yet-defined" situation or a protracted limbo status that make victims more vulnerable to blackmail, exploitation and re-trafficking.

## **WOMEN'S SPACES**

### **Arts. 7, 9, 13**

The survival of women's hard won spaces in Rome now under threat is a key issue with nation-wide implications which may set an example for the rest of the country. Placed at the political and geographic center of the country, women's organizations in the Capital have often played a catalyst role in women's advancement throughout the Country. Actions that place them in jeopardy promise to reverberate negatively in other parts of Italy. Threats to the survival of their operative space have solidified under the leadership of Movimento 5 Stelle (M5S) in the municipal administration. This political party now represents the backbone of the new national government. It is therefore reasonable to fear that the same lack of sensitivity to, and understanding of, gender issues displayed at the local level in Rome may permeate the culture and policies of M5S in the conduct of national affairs. This fear is compounded by the M5S partnership in government with the rightist Lega, a political formation whose affiliates have not shunned from utterly sexist and xenophobic positions.

Women's facilities under threat are part of the Comune di Roma-Municipality of Rome's real estate patrimony or belong to business concerns in which the local administration holds preponderant ownership or a relevant interest. These spaces have been either rented out under specific agreements or have been occupied by women's organizations for the benefit of the communities they serve.

The role such organizations have played in ameliorating, maintaining and managing these facilities has been recognized by successive local government administrations, including Regione Lazio. They

represent first ports of call, centers for support, counseling and networking, as well as abodes for thousands of survivors of violence against women in Rome and beyond. They provide information, training, health services, social, psychological and legal support, paths of empowerment, jointly with educational outreach and training for communities nationally and internationally. They have been—and continue to be-- laboratories of jurisprudence and other normative measures aimed at countering gender-based violence and discrimination over which these organizations exert constant vigilance and monitoring. Such organizations rely largely on the work of their volunteers. In terms of economic value, their services far outstrip the debt for unpaid rent that the local government administration and/or its related public firms impute to them.

Perhaps best known is the plight of the Casa Internazionale delle Donne (CID, International House of Women) that has been in the national and international spotlight since November 2017. At that time, the CID that houses 32 women's organizations, that is visited by 30,000 Italian and foreign women annually and has been active for more than three decades—received an injunction by the Comune di Roma to repay rent arrears worth more than Euro 800,000 . The Municipality of Rome owns the building complex where the CID and its consortium's organizations are located.

The CID countered this assessment specifying that it had paid rent for as much as sustainable while maintaining for more than 30 years a historic 17<sup>th</sup> Century building at no cost for the Comune. Moreover, the debt assessment was not balanced with the consideration of the value of services rendered by the CID. In order to obtain recognition for such services, the CID had been engaged in talks with the City's administration since 2013. As a result of a thorough survey, the previous City administration had come to the conclusion that the range and quality of CID services could be valued at Euro 700,000 annually. It is important to note that, over the years, the CID had payed more than Euro 500,000 in rent or as much it could afford. Moreover, it took the burden of maintenance of the Seventeenth Century complex that should have fallen on the Municipality of Rome. It also shouldered a shortfall of Euro 100,000 in lost revenues for a part of the building that the Municipality of Rome had pledged to make available to the CID and did not deliver. These two aspects (maintenance and lost revenue) make up for a credit amounting to Euro 535,000 that the CID claims and that the Municipality of Rome has failed to recognize. Consequently, the CID proposed a tenable and durable solution to the debt problem—including affordable rent fees, recognition of its credit, and a rescheduling of payments spread over a reasonable timeframe—with the aim of preserving and ameliorating services for citizens and visitors.

The matter was further complicated in April 2015 with the Administration's act, known as *Delibera 140*, with guidelines aimed at streamlining procedures for the administration of the Capital's patrimony. The intent of this provision was to map out and cash in from the City's real estate properties that had been rented for close to nothing and often within a system of graft and corruption. The effect, however, was also to hit hundreds of socially and culturally-oriented civil society organizations that operated in the City of Rome's buildings.

When the new M5S dispensation came to power, the CID sought to re-open negotiations. To this end, it requested to present its perspective and supporting documentation to the Mayor of Rome, Ms. Virginia Raggi.

In response to national and international pressure, the Comune di Roma opened a negotiating “political/technical table” which met five times until the end of 2017. During those negotiations the CID hosted inspections from the Comune’s delegations and provided documentation supporting its counterclaim which the administration pledged to examine. In January 2018, a meeting of the parties was suddenly canceled by a key Comune negotiator responsible for the administration’s real estate concerns. Despite numerous solicitations on the part of the CID, a new meeting was not rescheduled. In May 2018, the municipal assembly—dominated by the M5S-- passed a resolution which effectively pledges to dislodge the women’s movement from the premises and vilifies their history and contributions to the growth of the Nation. On the face of women’s protest, the administration hastily re-opened negotiations. As thousands of women were holding a rally on the Capitol Hill, the mayor of Rome and her negotiators finally met the CID’s delegation. In the ensuing talks, the administration pledged to examine the documentation, including the CID’s proposal, and reconvene a meeting by mid-June 2018. Moreover, it sketched a plan according to which it was envisaged to devote the building to a project catering to the neglected peripheries of Rome. No further details were offered. It was clear, however, that the nature and scope of the CID and its activities, as well as the citizenry involved were not at all clear to the interlocutors of the Municipality of Rome. Following urgent and repeated requests by the CID and two months of utter silence on the part of the administration, a meeting was convened at the end of July. On August 3, 2018, the administration withdrew from the Convention that stipulates its contract with the CID. In response, the CID undertook legal action.

With no agreed-upon solution in sight, scores of Italian women, including the 100,000 who have signed a petition supporting the CID, are kept in the dark regarding the fate of a place they treasure for their advancement and protection.

The case of the CID is exemplar, but not an isolated one. As the threat to its survival unfolded, the future of other women’s organizations in Rome and that of many different self-relying civil society groups active in the protection and empowerment of disadvantaged communities, as well as in other social and cultural fields was put at risk. UDI (Union of Italian Women), a group that stems from the Resistance movement and has been active on women’s rights since 1945, is fighting exorbitant and ill-grounded requests of rent increases. The Women’s House Lucha y Siesta-- that for more than ten years has served as a shelter and a service point for victims of violence and trafficking in a disadvantaged neighborhood-- faces the threat of eviction. Its facility was reclaimed by the public transportation authority to which it belongs. Before being put to use by the activists of Lucha y Siesta, the building had been long abandoned and was crumbling down. Equally at risk are the women’s centers Donna Lisa and Dalia. In June 2018, the administration threatened to close the Casa delle Donne of Tor Bella Monaca, located in one of the disadvantaged neighborhoods that the Mayor of Rome claimed to hold as a priority for the enhancement of women’s welfare.

In September 2018, a delegation of women's organizations was invited to brief the FEMM Committee of the European Parliament on the issue of women's spaces at risk. The delegation received a warm welcome by the parliamentarians and a promise of action. And in October 2018, the United Nations, taking note of threats against women’s spaces, asked the government to: “Please provide an update on the status of efforts to negotiate with women’s organizations currently occupying spaces owned by the municipal government in Rome” and “explain any efforts to ensure that women’s organizations will be able to continue to provide the important services that they are currently providing to women in

Rome.” The request was conveyed in a joint letter by Dubravka Šimonović Special Rapporteur on violence against women, its causes and consequences, and Ivana Radačić Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice. The government’s response and the Special Rapporteurs’ own findings and concerns will be discussed at the next session of the United Nations Human Rights Council.

Article 71 of a recent law, d. L.g.s. n. 117 of 2017 (Law on the Third Sector) stipulates that the State, and local administrations (Regions, the Autonomous Provinces and Municipalities) can lend their real estate facilities and other property which are not needed for institutional purposes, free of charge to “third sector” organizations that perform a service of public utility. Thus, women’s organizations are asking the Municipality of Rome to apply this new law and fulfill a duty to empower and cooperate with civil society initiatives which is also underscored in Arts. 7, 9 and 13 of the Istanbul Convention and which pertains to the actions of local governments by virtue of the principle of subsidiarity.

In September 2018, the Lazio Regional Council approved an amendment that paves the way for a positive resolution for the situation of the CID and other women’s facilities in the Region. The draft law n.55, the so-called budget bill, passed with 27 votes in favor and 18 against. Among its provisions, it includes an amendment that builds on law 117 of 2017, affirming that Region Lazio and local administration/authorities on its territory can attribute an economic value to the services offered free of charge by groups active in its territory. Such value would offset the cost of public assets, including real estate, that are used for performing such public utility and socially relevant services. In particular, the amendment refers to spaces devoted to the promotion of women's freedom and to countering gender-based violence, as well as to organizations that promote cultural activities. This is an important political recognition in a city that has seen the opportunities for those who work in the social sector dramatically shrink in recent years.

Ultimately, the question is and will remain a political one. At its core, it has the non-negotiable principles of equality, non-discrimination and justice enshrined in the international obligations Italy has willingly underwritten. Consequently, the outcome of the cases of women’s spaces represents a litmus test for both the nation’s Capital and the national government. At stake is whether Italy and its institutions of government have the determination to forego in part their pecuniary claims in order to better enhance citizens’ common good, as well as the substantive implementation of national and international law.

