

BUILDING A SAFETY NET for migrant and refugee women

Situation analysis and mapping of the existing legal and
policy framework in Italy

Reporting Partner for Italy: Differenza Donna ONG



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CHAPTER 1

Statistical data on migrant as well as refugee/asylum seeker populations disaggregated by sex, age, ethnicity and any other socio-demographic parameter

Data collection is the basic source of information on the impact of current EU and national policies as well as a basis for future measures and analysis, but not always official main actors (police officers, national stakeholders, institutions) compile a system of data disaggregated by sex, age, type of violence suffered, country of origin and/or destination. Information about gender differences of migration flows are not always available nor representative of all the migrant population living in Italy. The Asylum Information Database (AIDA) gives updated data about female migration (up-to-date as of 31 December 2016)¹ collecting data from ASGI (The Association for Juridical Studies on migration)². The following tables, provided by the Department of Civil Liberties and Immigration of the Ministry of Interior and publicised by the AIDA Report, gives a picture of the number of applications and granting of protection status at first instance 2016 in Italy:

Applicants in 2016		Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	123,370	99,920	4,800	12,090	18,515	54,470	5.3%	13.5%	20.6%	60.6%
BREAKDOWN BY COUNTRIES OF ORIGIN OF THE TOTAL NUMBERS										
Nigeria	26,975	22,980	515	910	3,165	13,795	2.8%	5%	17.2%	75%
Pakistan	13,660	11,340	460	2,160	1,670	7,330	4%	18.6%	14.4%	63%
Gambia	8,930	6,300	225	240	2,350	5,865	2.6%	2.8%	27.1%	67.5%
Senegal	7,615	5,685	80	205	1,445	4,900	1.2%	3.1%	21.8%	73.9%

¹ It is an organization coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and three non-EU countries (Serbia, Switzerland, Turkey).

AIDA's missions to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

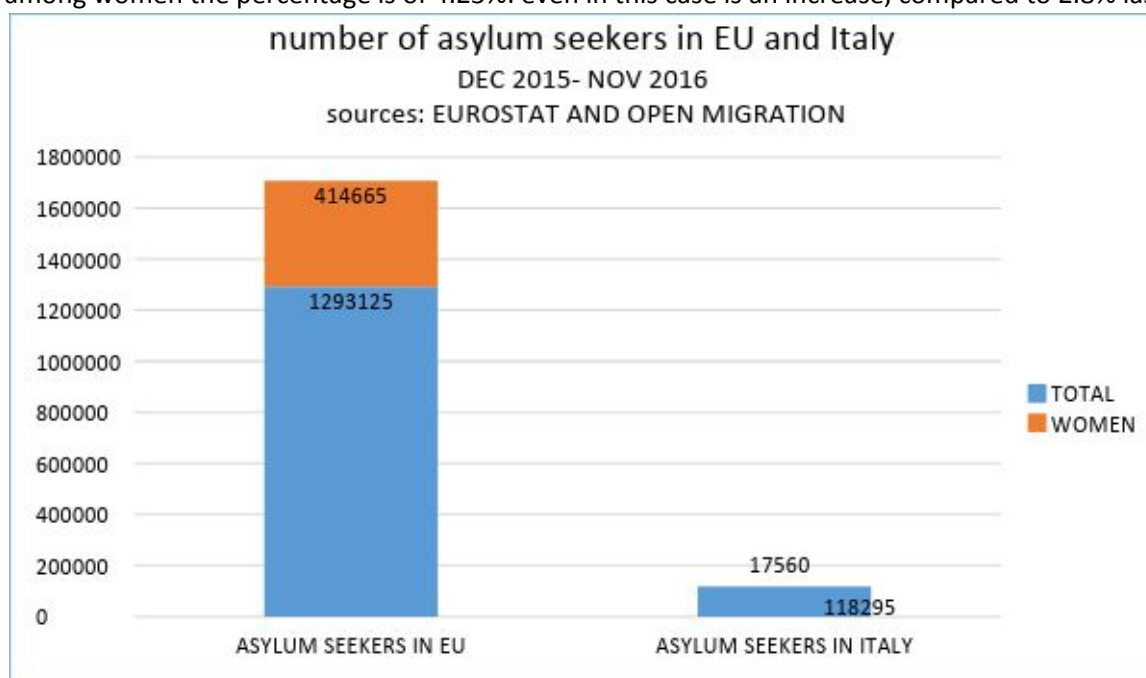
² www.asgi.it

Ivory Coast	7,460	5,495	110	170	895	2,635	2.9%	4.5%	23.5%	69.1%
Eritrea	7,425	7,685	215	170	15	80	44.8%	35.4%	3.1%	16.7%
Bangladesh	6,675	5,695	100	70	1,440	4,615	1.6%	1.1%	23.1%	74.2%
Mali	6,355	5,020	60	1,340	1,605	3,895	0.9%	19.4%	23.3%	56.4%
Guinea	6,055	4,380	40	45	655	1,815	1.6%	1.8%	25.6%	71%
Ghana	4,945	3,815	55	50	1,190	2,695	1.4%	1.3%	29.8%	67.5%
Afghanistan	2,850	1,925	380	3,580	40	125	9.2%	86.8%	1%	3%
Somalia	2,395	1,500	310	1,065	30	45	21.4%	73.4%	2.1%	3.1%
Iraq	1,540	1,020	225	615	35	45	24.4%	66.8%	3.8%	5%
Syria	1,380	550	1,100	65	5	15	92.8%	5.5%	0.4%	1.3%

Gender/ age breakdown of the total number of applicants: 2016 Number		Percentage
Total number of applicants	123,370	100%
Men	104,785	84.9%
Women	18,585	15.1%
Children	11,240	9.1%
Unaccompanied children	5,710	4.6%

Between December 2015 and November 2016, according to Eurostat data, asylum seekers in the European Union are 1,293,125, of whom 414,665 women (32%). In the same period of the previous year, women were 27% of the total registered arrivals of asylum seekers.

As for Italy, asylum seekers in the same period are 118,295, of whom 17,560 women: the proportion of women among asylum seekers has increased from 11 to 14.84%. In absolute terms, however, there is a net increase, almost a doubling (+ 86%) compared to the numbers in 2015, when they were 9,435. Comparing Italy with the EU, it turns out that 9.15% of EU asylum seekers apply in Italy (last year was 6.73%), and that among women the percentage is of 4.23%: even in this case is an increase, compared to 2.8% last year.

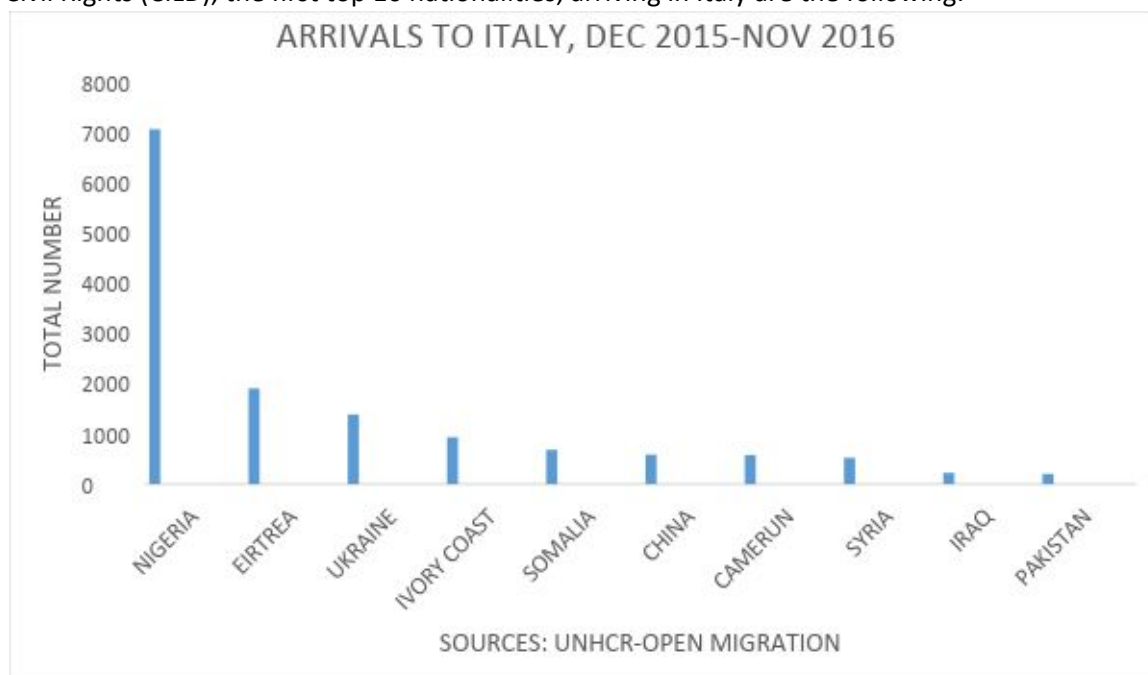


Migrants arriving by sea in 2016 are in fact 181,436 (UNHCR), of whom 13% are women.

In 2017 **102,879 arrivals** have been registered until September, of whom 11% are women³.

1.1 Nationalities of the asylum seekers

According to Open Migration, a platform delivering data created by the Italian Coalition for Freedom and Civil Rights (CILD), the first top 10 nationalities, arriving in Italy are the following:



Eritreans and Nigerians are the most represented nationalities on total registered population landing to Italy in 2016 (20.7% and 11.5%). Nigerians also represents more than 40% of women asylum seekers (7,085), followed by women coming from Eritrea (1,910, 10.9%) and Ukraine (1,390, or 7.9%).

1.2. Sea arrivals

Central Mediterranean is one of the primary entry points to Europe for asylum seekers and migrants. In 2016 the number of arrivals each month was generally consistent with those of 2015 up to September. Record numbers of arrivals in October helped push 2016 arrivals beyond the 153,000 who arrived in 2015 and 170,000 in 2014. Those arriving by this route were mostly from Sub-Saharan Africa, including many with international protection needs and unaccompanied minors. While 71% of arrivals in Italy were men, 14% of all arrivals (25,846 children) were unaccompanied minors, mostly from Eritrea, Gambia, and Nigeria, more than double the 12,360 unaccompanied minors who arrived in 2015.

While women comprised only 13% of arrivals, they accounted for 29% of Nigerian arrivals and over 20% of arrivals from Somalia, Cameroon, Ethiopia, and Eritrea. IOM has raised concerns that around 80% of Nigerian women who arrived by sea to Italy in 2016 may be victims of trafficking⁴.

Of the 181,436 refugees and migrants who reached Italy in 2016, 90% departed from Libya, mostly with boats departing from the west of the country, especially Sabratha. Many travelled in inflatable boats with 120-140 persons on board while others travelled on wooden boats ranging in size and with between 20 and 700 persons on board. The Libyan Coast Guard reported intercepting or rescuing 14,332 people at sea in 2016. A joint report by the UN Support Mission in Libya and the UN Office of the High Commissioner for Human Rights (OHCHR) reported that after interception by armed men believed to be from the Libyan

³<https://data2.unhcr.org/en/situations/mediterranean/location/5205>, last accessed 19-09-2017.

⁴ OIM, La tratta di esseri umani attraverso la rotta del mediterraneo centrale: dati, storie e informazioni raccolte dall'organizzazione internazionale per le migrazioni, 2016-2017, http://www.italy.iom.int/sites/default/files/news-documents/RAPPORTO_OIM_Vittime_di_tratta_0.pdf.

Coast Guard, refugees and migrants “are often beaten, robbed and taken to detention centres or private houses and farms, where they are subjected to forced labour, rape, and other sexual violence”.⁵ Around 6% of those who arrived in Italy departed from Egypt. While over 4,000 Syrians crossed the sea from North Africa in the first half of 2015, in 2016 the number of Syrians on this route was far lower with only 1,200 crossing the sea from North Africa to Italy⁶. The number of deaths in the Mediterranean as migrants and asylum seekers attempted to reach Europe in 2016 has significantly increased, primarily due to 4,578 deaths in the central Mediterranean, compared to 2,913 in the whole of 2015. The proportion of those refugees and migrants that died while attempting to cross the central Mediterranean in 2016 is one death for every 40 persons crossing, which is higher than the one in 53 recorded in 2015.⁷ Survivors reaching Italy often have horrific injuries, including burns from fuel mixing with sea water in the boat, or else accrued during their journeys across the Sahara or in Libya, often at the hands of smugglers. Other particularly vulnerable persons rescued include victims of torture, many survivors of sexual violence, women in advanced stages of pregnancy, and unaccompanied children.⁸ 123,482 people applied for asylum as of the end of the year and over 176,000 were accommodated around Italy in reception centres. Relocations from Italy under the EU’s Relocation Mechanism of asylum seekers were slow with just 2,654 (7%) of the 39,600 originally supposed to be relocated by September 2017. As refugees and migrants tried to move onwards and cross into France or Switzerland, increased numbers accumulated in the towns of Ventimiglia and Como requiring the establishment of temporary accommodation facilities. In August, a group of 48 Sudanese nationals who may have been in need of international protection but had not applied for asylum in Italy were deported to Sudan under a bilateral agreement, prompting concerns about whether the agreement includes adequate safeguards against refoulement.⁹

SEA ARRIVALS IN ITALY: TOP 5 COUNTRIES OF ORIGIN - 2016

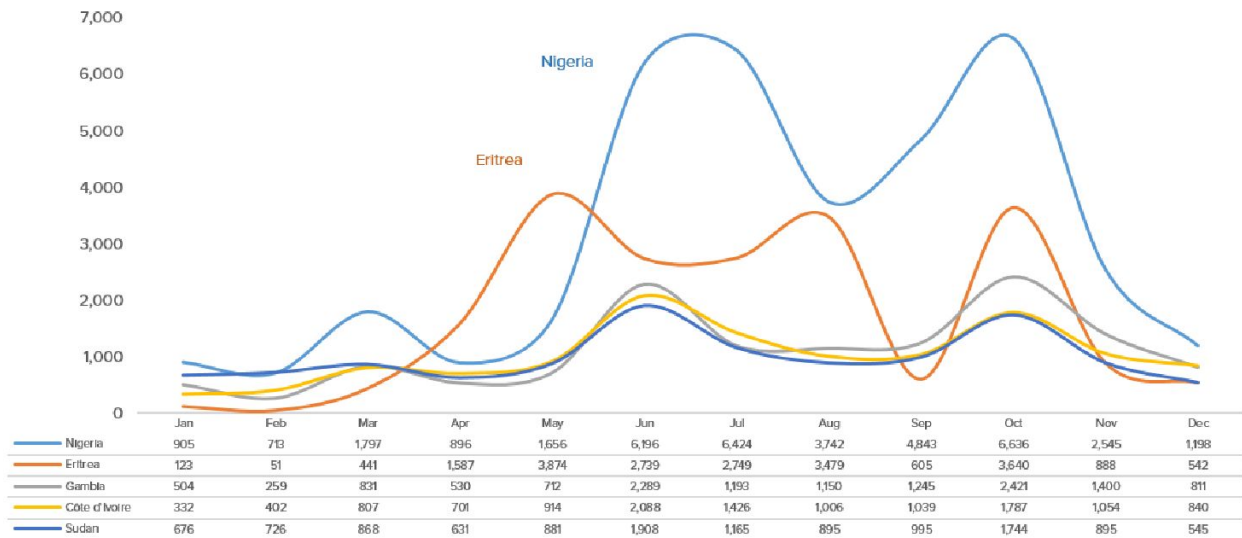
⁵ United Nations Support Mission in Libya and Office of the United Nations High Commissioner for Human Rights, “DETAINED AND DEHUMANISED” REPORT ON HUMAN RIGHTS ABUSES AGAINST MIGRANTS IN LIBYA, December 2016, https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf, last accessed 19-9-2017.

⁶ UNHCR, Desperate Journeys, February 2017, <http://www.unhcr.org/58b449f54.pdf>, last accessed 19-9-2017.

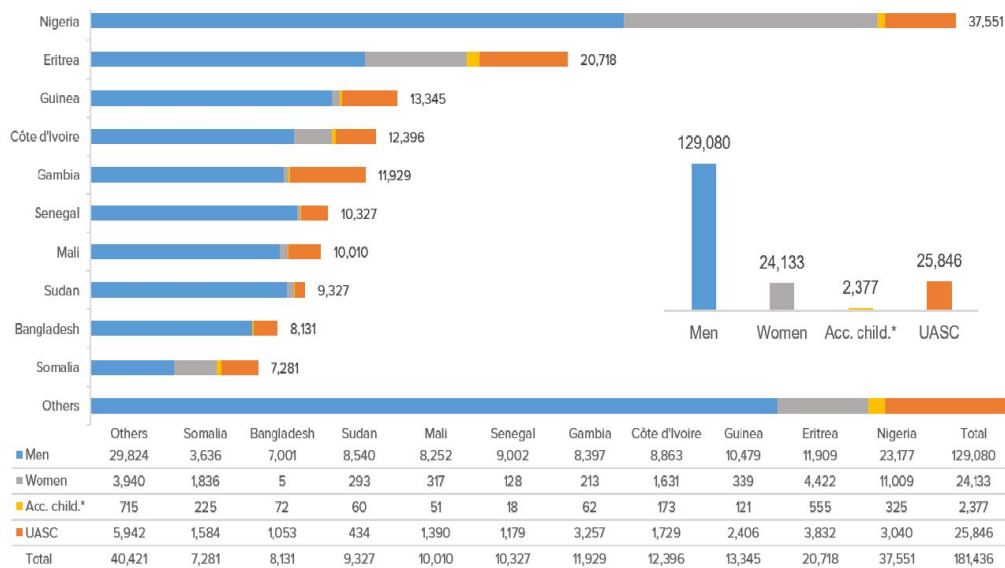
⁷ Laura Smith-Spark, Mediterranean migrant deaths reach record level in 2016, CNN, <http://edition.cnn.com/2016/10/26/world/mediterranean-refugees-2016-record-migrant-deaths/index.html>, last accessed 19-9-2017.

⁸ Italy - Unaccompanied and Separated Children (UASC) Dashboard, <https://data2.unhcr.org/en/documents/download/53357>, last accessed 19-9-2017.

⁹ OPEN MIGRATION, Forced returns to Sudan, the case against Italy at the ECHR, <https://openmigration.org/en/analyses/forced-returns-to-sudan-the-case-against-italy-at-the-echr/>, LAST ACCESSED



EASO¹⁰ published the following data:



Following an unprecedented migrant influx, the EU relocation programme started upon to support the 'frontline' Member States of Italy and Greece, which were under considerable pressure. After a proposal made by the Commission in May 2015, the Council adopted two decisions – (EU) 2015/1523 and (EU) 2015/1601 respectively – establishing a temporary and exceptional relocation mechanism for 160 000 applicants in clear need of international protection from Greece and Italy, to be implemented over two years until September 2017. Such mechanism has been confirmed as proportionate and actually contributes to enabling Greece and Italy to deal with the impact of the 2015 migration crisis according to the Court of justice of European Union¹¹.

¹⁰EASO is an agency created by European Union Regulation 439/2010 to strengthen the cooperation of EU Member States on asylum, enhance the implementation of the Common European Asylum System, and support Member States under particular pressure.

¹¹ Judgment in Joined Cases C-643/15 and C-647/15 Slovakia and Hungary v Council.

1.3 Data for female SGBV cases disaggregated by age, ethnicity and any other socio-demographic variable DATA FROM ISTAT (National Statistic institute)¹²

In 2015 Istat updated data on VAW in Italy: it emerged that **31,5% of women in Italy between the age of 16 and 70 years have suffered a form of physical or sexual violence in their lifetime.**

Total number of foreign women living in Italy who have suffered physical or sexual violence in their lifetime is similar to Italian women's (31,3% vs 31,5%).

Incidence of violence among nationalities. Considering the first six nationalities of foreigners residing in Italy, women who have suffered more violence include Moldovans (37.3%), Romanians (33.9%) and Ukrainians (33.2%). Followed by Moroccans (21.7%), Albanians (18.8%) and Chinese (16.4%). Physical violence is more frequent than sexual violence for all foreign nationalities.

Forms of violence. Migrant and refugee women experience more frequently physical violence (25,7% vs 19,6%), Italian women experience more often sexual violence (21,5% vs 16,2%); or, better, sexual violence remains underreported among migrant and asylum seekers women. The forms of violence were also very serious: migrants reported wounds (44.5%) and feared for their lives (44.2%), although the proportion of women who define these facts is lower than "Very serious "(36.6%).

Perpetrators. For migrant women, in most cases (68.9%), the violence is suffered by their current or previous partner and has begun in the country of origin. For 20%, violence is related to a relationship started in Italy. For the violence suffered by other men, migrant women describe situations similar to those of their partners: these are serious episodes that have caused wounds (29.7%) and where they were afraid of their own lives (33.7%).

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

The condition of Nigerian women in Italy

The situation of Nigerian women in Italy deserves, for its seriousness, a more complex analysis: they are the most represented nationality among women in Italy and they are the 40% of asylum seekers followed by Eritrea (1,910, 10.9%) and Ukraine (1,390, or 7.9%).

As stressed both by the UNHCR and the latest report by Greta (Council of Europe Experts Group on Combating Trafficking in Human Beings), the number of Nigerians seeking protection in Italy in recent years has been continuously increasing. In particular, in the comparison of applications between 2015 and 2016, the number of asylum requests from Nigerian women is almost doubled (+ 95.5%), from 5.633 to 11.009¹³. According to IOM report,¹⁴ the reasons for migration are considerably related to gender: "Compared to men, a more substantial percentage of women leave their country for family reasons (37% vs. 17%), IOM writes. Many women say they have left their own home to escape abuses, forced violence and forced marriages, or to follow their partners. " For men, another significant factor is belonging to political / religious groups, while in the case of women this seems less significant.

According to the Greta report, 70% of children and women arriving from Nigeria show signs of being trafficked for labor or sexual exploitation. IOM even reports that 80% of Nigerians who arrived in Sicily in 2016 are victims of trafficking, destined to the prostitution market in Italy.

Forms of gender based violence against migrant and asylum seekers women

¹² ISTAT, Violenza contro le donne, 2016,

https://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf, last accessed 16 November 2017.

¹³ GRETA, REPORT ON ITALY, GRETA(2016)29, <https://rm.coe.int/16806edf35>, last accessed 19-9-2017.

¹⁴ IOM, Report on victims of trafficking in mixed migration flows arriving in Italy by sea, 2016, http://www.italy.iom.int/sites/default/files/news-documents/IOM_Report_on_victims_of_trafficking.pdf, last accessed 19-9-2017. See also US Trafficking in Persons (TIP) Report 2017, Countries narrative: Italy, <https://www.state.gov/j/tip/rls/tiprpt/index.htm>, last accessed 20-9-2017.

According to a report by the EU Parliament - Civil Rights and Constitutional Affairs - on the reception of refugees and asylum seekers, women traveling alone are at serious risk to be victims of sexual and gender based violence, both on the journey and in the reception centres. Some of them, desperately in need of protection, marry a man during the trip¹⁵.

Amnesty International documented that migrant women suffer violence during the trip, particularly in Libya, from where 89.7% of migrants arriving in Italy pass: there is no distinction of nationality, the traffickers do not stop even if the victim is a very young girl or a pregnant woman. Rape is used as punishment if the girl does not have the money to pay the trip, or to force her family to send a sort of "ransom". While avoiding unwanted pregnancies, which may become a further obstacle to travel, women begin to take massive contraceptive doses months before moving on, with serious health consequences, as found during medical examinations on arrival at reception centres.¹⁶

1.4 Data for sites and/or buildings or urban areas where refugees/migrants reside

According to the national report "Notizie sulla presenza straniera in Italia 2017" edited by Istat, the National Institute of Statistics, the provinces attracting migrant citizens are predominantly those of the Centre-North, 2 foreigners out of 3 reside in the Northern cities, 35% reside in Northern-West Italy, 27% in Northern-East Italy, 24% in Centre Italy and 13% in Southern Italy.

The Sicilian provinces of the southern coast (Trapani, Agrigento, Calatanissetta and Ragusa) and Calabria (Crotona, Catanzaro and Reggio Calabria) have very high immigration rates. For such provinces, however, it's not possible to consider them a voluntarily expressed settlement, as there are some reception centres for asylum seekers in these areas.

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¹⁵Committee on Women's Rights and Gender Equality, Report on the situation of women refugees and asylum seekers in the EU, 10 February 2016,
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¹⁶ AMNESTY INTERNATIONAL, ITALY 2016-2017,
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CHAPTER 2

Legal framework: the different laws relevant to the status and situation of migrant and refugee/asylum seeker women

2.1 Policy and Law

Italian Immigration policy has assumed always more restrictive and repressive forms diminishing the access of migrants, refugees and asylum seekers to fundamental rights with a prevalence for criminalisation of conducts and status related to migration flows.

Such policy has progressively affected the practice of operators (police officers, social workers, magistrates, public officers and healthcare staff, etc.) who deal with migrants, refugees, asylum seekers and exposed them to violations of their rights.

Despite the legal prevalence of the duty to protect and grant the unconditional respect of fundamental rights to everybody without distinction (articles 2 and 3 Italian Constitution; article 2 Immigration Law), public order goals limiting the flows and increasing expulsions prevail over the right to protection, healthcare and legal assistance, fair process, respect of family and private life.

The evolution of the legal system affects particularly migrant and refugee/asylum seeker women, who are exposed to unsafe journey to reach EU countries, and nullifies the effectiveness of protection and prevention measures, nourishing the general perception of impunity when GBV is committed against migrant/asylum seekers women and aggravating the women's fear not to be believed when they report GBV. Since January

2017 DD registered an average of 20 cases of third-country women detained to be deported after having reported GBV to police and found without a permit of stay.

2.1.1 Immigration Law

These are briefly the major steps we can mark for the Italian immigration legislative policy:

- Law 39/1990 Legge Martelli: for the first time, immigration flows have been regulated. It establishes a fixed number of accesses (quotas), linking them to labour market needs; those exceeding the quota, are considered “irregular immigrants”¹⁷ and have to be deported.
- Law 40/1998 Legge Turco-Napolitano and legislative decree 286/1998 (hereinafter referred as Immigration Law): these acts established a body of provisions ruling the immigration status, the permits of stay and the deportation procedure. These acts introduced the first administrative detention measure within the so-called *centers for temporary stay* (Centri di permanenza temporanea, CPT).
- Law 189/2002 Legge Bossi-Fini: it establishes that Immigrants found in international waters, formerly outside of the patrolling power of Italy, can be sent back to their country or to neighbouring countries. To obtain a work permit, a work-contract and a rental agreement are needed. All undocumented immigrants found by police on Italian territory without the necessary documentation must be identified and deported to their countries of origin. The system of protection for asylum-seekers and refugees (the so-called SPRAR) is introduced. Since the Italian Constitutional Court declared some parts of the Bossi-Fini Law to be inconsistent with the Italian Constitution (judgment of the constitutional court no. 222 of 15 July 2004), law decree 241/2004 was enacted. The decree modified the current rules on the expulsion of irregular immigrants to ensure that the guarantees provided by Article 13 of the Constitution fully applied to immigrants whose forcible deportation had been ordered and, at the same time, to ensure the maximum speediness of the confirmation procedure and the enforcement of expulsions.
- Law 125/2008: The 2008 Security Package contains “urgent measures in the field of public security”. The main amendments were: introduction of a new aggravating circumstance: all crimes will be punished with a harsher penalty if the offender committed the crime while he or she was residing irregularly in the country (in judgment 249/2010, the Constitutional Court declares that the aggravating circumstance is in breach of the Italian Constitution); all immigrants, even EU citizens, are subjected to expulsion if sentenced to more than two years’ imprisonment (art. 235 criminal code); introduction of the crime of providing lodging to an immigrant without a residence permit (imprisonment between six months and three years and confiscation of the property); increased penalties for all those who facilitate an irregular immigrant in staying in Italy; increased penalties for all people who employ immigrants without a residence permit (imprisonment between six months and three years and a fine of 5,000 Euros for each worker employed); the name of temporary detention centres was changed from CPT to CIE (Centre for Identification and Expulsion).
- Law 94/2009 (Security package): The main changes were: introduction of the crime of irregular entry and stay (fine from 5,000 to 10,000 Euros); the maximum period of detention in a CIE is extended from 60 days to 180 days; duty to show the resident permit to obtain authorisations, as well as access to public services, with the exception of sports and recreational activities, access to health care (for urgent and essential treatments) and schools; all third-country nationals who wish to marry must have a residence permit;¹⁸ extension of the time required to obtain citizenship by marriage: from 6 months to 2 years, or 3 years if the marriage was celebrated outside Italy. The times are halved in the presence of natural or adopted children. These provisions deeply affected migrant women’s lives, strictly dependent on their spouse.¹⁹

¹⁷When referring to undocumented migrants or irregular immigration we refuse to use the term ‘illegal migrant’, preferring the recognised terms ‘undocumented’ or ‘irregular’ migrant following the guidelines disseminated by PICUM. For more details, see <http://picum.org/en/news/picum-news/44372/>

¹⁸In judgment No. 245/2011, the Constitutional Court declared that this provision is not consistent with Article 29 of the Italian Constitution, which provides for the right to marry as a fundamental human right

¹⁹ See Italian Shadow Report on the Implementation of the Beijing Platform 2009-2014,

The act introduced an “Integration Agreement” for third country nationals over the age of sixteen years who enter Italy for the first time and who wish to apply for a residence permit for no less than one year. By signing the agreement, the migrants commit to achieve certain integration goals; loss of points can lead to expulsion. It is significant that this provision specifies that any action implementing the agreement must not involve further public costs. Introduction of an Italian language examination for the issuance of a residence permit for EU citizens who are long-term residents.²⁰

- Law no. 129/2011 (security package): the act, aiming to the reception of directive 2008/115/UE, increased the maximum term of detention in a CIE from 6 to 18 months.
- Law no. 46/2017 (the so-called “Minniti Decree”): the act intervened to amend procedures in theme of asylum requests, it was widely criticised for its negative impact on rights and guarantees of applicants²¹.

2.1.2 Immigration Law provisions with an impact on migrant women

Article 5 §6 Immigration Law: it establishes the permit of stay for humanitarian reasons. It has been the most common permit of stay requested for undocumented women suffering from GBV (excluded THB) before the introduction of the specific permit of stay for victims of domestic violence (article 18 bis Immigration Law).

Article 10 §4,5,6 Immigration Law, regulating border refusal, establishing that at the border asylum seekers’ rights and humanitarian reasons prevail over the removal.

Article 10 bis Immigration Law, criminalising irregular migration, increased the vulnerability of undocumented migrant women and limited their access to justice.²²

Article 13 Immigration Law, regulates the removal procedure. This article has been often applied to undocumented women, even to victims of GBV.

Article 14 Immigration Law, regulates the detention of undocumented migrants to be deported. The detention is provided as exceptional and residual measure, but in practice it is the sole measure applied also to undocumented women. The detention centre of Ponte Galeria remains the unique structure where undocumented women are detained. They usually are victims of GBV, THB or suffered GB persecutions in countries of origin.

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

Article 17 Immigration Law, establishes a permit of stay for “Justice reasons”. It has often been issued for undocumented migrant women reporting GBV before the introduction of article 18 bis Immigration law.

Article 18 Immigration Law: a foreigner on Italian territory who is in a situation of **sexual exploitation** characterised by violence and who faces **danger to her/his safety** as a consequence to attempt to escape the constrictions exercised over himself/herself, can be granted a special permit for social protection reasons. In addition to this temporary permit, victims are integrated into a **social integration and assistance program**. This is a temporary permit of **6 months** which can be **renewed for one year or converted into a work or study permit**.

Law in action: the norm aims at offering to women victims of trafficking and sexual exploitation the possibility of escaping from violence and, even in some cases, of slavery. One big issue related to the effective application of that norm is that victims of trafficking are undocumented and when identified by police they are deported like other undocumented immigrants. Only in case where they decide to cooperate with the

http://www.pangeaonlus.org/r/Pangea/Documenti/Pdf/advocacy/piattaforma-pechino/Bejin%202009-14%20Italian%20partial%20Shadow%20Report%20_pdf.pdf, last accessed 16 November 2017.

²⁰ The act was largely criticized. See among many reports, REPORT by Thomas Hammarberg

Commissioner for Human Rights of the Council of Europe Following his visit to Italy on 13-15 January 2009.

²¹ For first analysis see ASGI, Decreto Minniti – Orlando : prime riflessioni interpretative dopo l’entrata in vigore, 2017, <https://www.asgi.it/allontamento-espulsione/decreto-minniti-orlando-prime-riflessioni-interpretative-entrata-vigore/>, last accessed 16 November 2017.

²² Italian Shadow Report to CEDAW Committee, 2017, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ITA/INT_CEDAW_NGO_ITA_27675_E.pdf last accessed 16 November 2017.

police, and decide to testify against the traffickers, they are able to obtain the special permit of residence, even if the norm provides for the possibility to grant this special permit, even without triggering criminal proceedings when the condition of exploitation emerges during *interventions of assistance of local social services*.

As regards the number of residence permits issued to victims of THB, by the end of August 2016, a total of 494 permits had been issued under Article 18 of the Consolidated Immigration Act, of which 139 to Nigerian women. It is a very small amount in comparison with the number of Nigerians who arrived in Italy in 2016 and were refused international protection, even if identified as THB victims by NGOs.²³

ART. 18 BIS Immigration Law: Migrant women have the possibility to apply for the permit to stay for foreign victims of domestic violence, provided by art. 18 bis of the Immigration law introduced by the Law 119/2013.

Art. 18 bis provides that the foreign victim of domestic violence in Italy can request a special permit to stay for humanitarian reasons.

These are the conditions required to obtain the permit:

- 1) authorities have to know the existence of the **situation of violence** (such as family abuse and mistreatments, personal injury, kidnapping, sexual violence and stalking) or because it has started a criminal proceeding or because the situation of violence emerges during police operations;
- 2) it is also to assess the existence of a **concrete risk** for the woman or for other members of her family.

The permit is granted by the immigration authorities, upon consent of the public prosecutor who is overseeing the individual woman's case.

Law in action: One of the issue related to the concrete application of such norm is that it still puts the burden on the woman to actively report the abuse or violence to the authorities. Most of the times, these women do not dare to report the actions of their partners because they are afraid of being deported from Italy.

From the legal practice of lawyers of Italian women's shelters it emerges that when women ask for the permit under art. 18 bis within the criminal proceeding, then, it is spread the bias of the falsehood of the denouncement considered just as instrumental to obtain the permit, despite the low rate of request of such specific permit of stay. Available data, in fact, registered only 30 permits of stay issued under article 18 bis Immigration law in 2015²⁴. Women in such cases risk to experience "secondary victimisation" during the criminal proceedings as they are not believed by judicial authorities.

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

Articles 22 §12 bis Immigration Law provides a permit of stay for labour exploitation of undocumented migrants. It is rarely applied because it assumes the previous criminal complaint.

Articles 28-30 Immigration Law regulate family reunification for migrants. The provisions seriously limit the autonomy of women whose status is strictly dependent on the status of their spouses or parents. Migrant women who are granted permit of stay for family reunification, are at risk to suddenly become undocumented because the renewal procedure depends on the will of their spouse or parent. The latter usually sequester passport or do not engage for the issuing or the renewal of the permit of stay.²⁵

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

2.1.3. Asylum and Refugee Law

Statuses foreseen

Legislative Decree 251/2009 transposing the Directive 2002/83/CE recognised two forms of international

²³ See GRETA Report 2016.

²⁴ Ministry of Interior, Data survey 2015, Cern-Napoli.

²⁵ See the Italian Shadow report to CEDAW Committee, p. 8 ff.

protection: status of refugee and subsidiary protection.

The status of refugee is provided to persons fleeing from persecution on grounds of race, religion, nationality, social group or political beliefs. This permit lasts five years and it can then be either renewed or converted in a permit for work reasons. It grants a wide variety of rights, such as the right to being reunited with family members, the right to travel and to work, just like Italian citizens.

The **subsidiary protection** is granted to a citizen not belonging to the European Union, or stateless person that does not meet the requirements to be recognised as a refugee, but there are founded reasons to consider that if he or she returns to the country of origin, or in the country in which he or she habitually resided, would effectively risk serious injury, and cannot or does not want, due to this risk, to benefit from the protection of this country.

It is also possible a **third result** of the asylum procedure: a 2-year residence permit on **humanitarian grounds**, e.g. for health conditions.

Legislative Decree No. 18/2014 of 21 February 2014 transposed into national law Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

Furthermore, Legislative Decree No. 142/2015 (in force since 30 September 2015) transposed Directive 2013/33/EU on “minimum standards for the reception of asylum applicants and Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection”. In addition, Presidential Decree No. 21/2015 on “Regulation on the procedures for the recognition and revocation of international protection” contains provisions aimed to clarify the different stages of the asylum procedure, such as the composition and functioning of the Territorial Commissions and the National Commission for Recognition of International Protection.

Territorial Commissions for the Recognition of International Protection (CTRPI) and Sub-commissions are the authorities competent to examine asylum applications and to take first instance decisions. According to Decree-Law 119/2014, Territorial Commissions in Italy are 20 with the possibility to create additional sub-Commissions in the entire national territory. CTRPI are made up of 4 members. 2 representatives of the Ministry of Interior, one of which is a senior police officer; 1 representative of the Municipality (or Province or Region); and 1 representative of the UNHCR. The members and substitutes of the Territorial Commission have to be skilled or trained in the field of migration, asylum and human rights in order to be nominated, but, according to the experience of many associations working in the field, still too many members of the CTRPI do not reflect these criteria.

Procedure before the territorial commissions

Pursuant to Legislative Decree No. 142/2015, Territorial Commissions for the Recognition of International Protection have to interview the applicant within 30 days after receiving the application and decide in the three following working days. When the Territorial Commission is unable to take a decision within this time, the examination procedure may be extended for a maximum period of 18 months. Legislative Decree No. 142/2015 introduced for the first time an accelerated procedure. Where the application is made by an applicant placed in administrative detention centres (CIE), the Police Headquarters (Questura), upon receipt of the application, immediately transmits the necessary documentation to the Territorial Commission which has to organise a personal interview within seven days of the receipt of the documentation and take a decision within the two following days. These time limits are doubled when: (a) the application is manifestly unfounded; (b) the applicant has introduced a subsequent application for international protection; (c) the applicant has lodged his or her application after being stopped for avoiding or attempting to avoid border controls or after being stopped for irregular stay, merely in order to delay or frustrate the adoption or the enforcement of an earlier expulsion or rejection at the border order. Detained applicants who appeal against the rejection decision by the Territorial Commission remain in the administrative detention facility until the adoption of an order from the competent court suspending the expulsion order and as long as they are authorised to remain on the national territory as a consequence of the lodged appeal. In such a case, the Questore requests the extension of the administrative detention for an additional period no longer than 60 days, which can be periodically

extended by the judicial authority up to a total of 12 months.

Under the Procedure Decree, the decision on the merits of the asylum claim must be taken by at least a majority of 3 members of the Territorial Commission; in the case of a 2:2 tie, the President's vote prevails. However, since a reform of 7 August 2014, only one member is in charge of conducting the personal interview, where possible of the same sex as the applicant. The interviewing officer then presents the case to the other members of the Commission so that a joint decision can be taken.²⁶

Procedure of appeal

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Tribunal (a judicial body) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit on humanitarian grounds instead of granting international protection.

The appeal must be lodged within 30 calendar days from the notification of the first-instance decision and applicants placed in CIE and those under the accelerated procedure have only 15 days to lodge an appeal.

The first appeal has automatic suspensive effect. However, when the applicant is detained in CIE or claim is inadmissible or "manifestly unfounded", the applicant has to explicitly request individually a suspension of the return order from the competent judge. The court must issue a non-appealable decision granting or refusing suspensive effect within 5 days.

The Tribunal can either reject the appeal or grant international protection to the asylum seeker.

The Law 46/2017 (decreto Minniti) abolished the possibility to appeal the Civil Tribunal decisions on international protection before the Court of Appeal.

Furthermore, it excluded the personal comparison of asylum seekers before the civil Tribunals and abolished the second degree of appeal.

It established 12 specialised sections, not enough taking into consideration the number of the requests.

The act has sparked strong reactions from NGO and even from some magistrates since it drastically reduces the judicial protection of asylum seekers.

The Magistrates' National Association – Cassation section also highlighted the unreasonableness of the choice to abolish the second-degree appeal, which is still provided for civil disputes of much lower value if compared to international protection cases, also considering that the procedure before the Court of Cassation is basically a written procedure²⁷.

2.1.4 Law against GBV

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

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

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

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

- **Legislative decree 212/2015**: it applies the Directive 2012/29/UE with regard to victims' rights within criminal proceedings. It introduces within the Italian criminal code norms related to the right of information given to victims before the criminal complaint, and it introduces the concept of "vulnerability"

²⁶ <http://www.asylumineurope.org/reports/country/Italy/asylum-procedure/procedures/regular-procedure>

²⁷

<http://www.asgi.it/asilo-e-protezione-internazionale/asgi-magistratura-democratica-con-il-decreto-legge-immigrazione-asilo/>

for victims of GBV in order to grant them the possibility to apply for protected testimony (art. 90 quarter c.p.p.)

2.2. Do procedures take into account the needs of the victims of GbV? Law and practice

Laws

- Legislative decree of 19th November 2007, n. 251: The Legislative decree 19th November 2007 n. 251, transposing the EU Directive 2004/83/EC calls the officers in charge of the evaluation of the asylum request to take into account the sex of the applicant as factor for determining the persecution (article 3, paragraph 3, let d). Article 7 paragraph 1, let a) includes sexual violence among the forms that acts of persecution may take and qualifies acts specifically directed against one sex or gender as acts of persecution. The Italian legislator transposes the EU Directive perspective, mentioning only gender-specific persecutions, without reference to gender-related persecutions and, moreover, it does not correctly distinguish the terms sex and gender.
- Legislative Decree 28 January 2008, No.25: The Legislative Decree 28 January 2008, No.25 transposing the EU Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, only mentions the sex of the applicant when regulating or setting the rules of the individual interview: article 12 provides that, wherever possible, the interviewer may be of the same sex with the applicant, while article 26 provides that if the applicant is a woman, female personnel shall take part in the procedure of asylum claim submission.
- Legislative Decree n. 18/2014: This act transposes the Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). The provisions led to the adoption of some relevant changes. Firstly, more protective provisions for unaccompanied children were adopted. Moreover, the residence permits issued to both refugees and beneficiaries of subsidiary protection have now the same duration, entailing an extension of the duration of the residence permit for subsidiary protection from 3 up to 5 years. In addition, beneficiaries of subsidiary protection benefit of the same rights recognised to refugees with regard, in particular, to family reunification. The act specifies that *for the purposes of determining membership to a particular social group or identifying a characteristic of such a group, it shall be take into account gender considerations, including those regarding gender identity.*
- Legislative Decree 18th August 2015, No. 142: The Legislative decree 18th August 2015, No. 142, transposing Directive 2013/33/EU and Directive 2013/32/EU, takes into account the gender in defining the condition and modalities of detention of asylum seekers, not considering that women asylum seekers claiming gender-related persecution are in psychological and physical conditions, which are not compatible with the deprivation of personal liberty. Furthermore, the detention as regulated by the decree is not only against the fundamental rights of all asylum seekers, including women, but exposes them to serious harms, which will not be prevented by the special reception measures provided by article 17.

Both gender-related persecution and gender-specific persecutions are mentioned only as factors of vulnerability (article 17).The sole improvement of the assessment procedure is provided by article 25 let. g) no. 3 allowing the Commission to ask the views of experts, including gender issues experts.

Practice

Italian Guidelines for the evaluation of the request for recognition of the refugee status have been adopted by the Ministry of Home affairs in 2005. They dedicate a section to the international protection of women asylum seekers.

It lacks a specific analysis about the women's access to international protection in Italy, recalling data and recommendations of other agencies, like UNHCR, and other civil society organisations.

The guidelines encourage the inclusion of women within a “particular social group”, even if specifying that the belonging to such group does not automatically imply the inclusion of all women in a “particular social group”, the characteristics of which shall be demonstrated case by case. Such applications should be preferred when members of the identified social group are treated as inferior subjects, when authorities condone their discrimination or contribute to the persecution.

At this regard, the guidelines mention the situation of women who are victims of domestic violence, sexual violence and FGM in countries where they are not granted effective protection.

The guidelines specify the distinction between gender-specific persecutions and gender-based persecutions, encouraging a complete appraisal of the grounds of the request under the article 12 Geneva Convention.²⁸

The guidelines also consider the procedural issues, but only reproducing UNHCR recommendations on the issue.²⁸

Rights of Information

Women do not receive complete and comprehensive information about the asylum system and the related procedures. They reported they felt dragged through a series of acts and circumstances, of which they did not understand the purpose, except to avoid deportation. Women, consequently, did not know the aim of each hearing or interview undertaken, nor were they informed by their lawyers about the individual legal strategy to be utilised during the hearing session. Women pointed out that they usually did not speak more than once with their lawyers, at the suggestion of the operators of the structures that accommodated them. It appears from the interviews that most of the women did not understand what asking for asylum really means and they usually were quite confused when asked about it. Women asserted that they were not given information about their rights and/or about asylum and grounds for it. Women detained for deportation reasons, generally lodged the asylum request after they had a lawyer appointed, however they did not receive information about the meaning of the asylum procedure. Three of the women who lodged an application in a detention centre were not aware that the permit of stay granted after the request allowed them to look for a job 6 months after the submission of the application (recently, the waiting time was reduced to 2 months).²⁹

Specialised legal counselling and assistance

Asylum seeker women are not granted of legal assistance since the beginning of the asylum assessment and the legal advisors they meet usually do not have GB persecutions expertise.

Interview

Women pointed out that they were not informed of the content and the aim of the interview before being interviewed by the TCs members. They usually received information for the first time directly from the interviewer. Before the interview, women claimed to have been usually told by other asylum seekers to speak about the general situation in their country. Only 1 out of 10 women, was assisted by a lawyer when meeting with the TC. Detained asylum seekers are less likely to be accompanied by a lawyer. All of the interviewed women claimed to feel tired to have to repeat more than once their life story, already told many times, in front the TCs members.

Although UNHCR recommends gender-sensitive procedures during the hearings, such as asking open-ended and specific questions, which ensure an open and supportive environment that helps establish trust, and/or choosing female interpreters and interviewers, all women interviewed reported no gender-sensitive questions or a reassuring environment during the interview. However, when speaking to interpreters who participated in this study, they asserted that the above recommendations were usually met when the hearing interviewer was a UNHCR member.

Interpreters

²⁸Differenza donna, GAPS report, 2016,
http://www.gaps-differenzadonna.org/wordpress/wp-content/uploads/2016/03/GAPS_ENG.pdf

²⁹Differenza donna, GAPS report, 2016,
http://www.gaps-differenzadonna.org/wordpress/wp-content/uploads/2016/03/GAPS_ENG.pdf

Within the research project Gendering Asylum Protection System (GAPS), supported by Feminist Review Trust, and aiming to unmask the lack of effective access of women to international protection, *Differenza Donna* interviewed asylum seeker and refugee women. Most of them claimed not to have received information about the possibility to ask for a female interpreter or a female interviewer. All interviewed interpreters, all serving at different TCs (Rome, Catania, Caltanissetta, Caserta, Foggia) were seriously committed to their practice code, in particular to the respect of privacy and loyalty in interpretation. Furthermore, they felt that it was their job as a civil commitment towards other migrants/asylum seekers since many interpreters had shared the same asylum experience. Interpreters interviewed showed a strong feeling of empathy with the asylum seekers, not only because of the individual stories, but also for the asylum seekers and refugees personal condition as people forced to flee their home countries. Interviews carried out showed that interpreters had a low degree of professional development, which was further diminished by the precariousness of their job contracts. The main issue connected to this aspect was the difficulty to recognise and manage personal bias and prejudices, despite the effort to be neutral and loyal in the translation. It is not rare, as it appears from the interviews, that women's stories and experiences are stigmatised by an interpreter from the same country: one of the interviewees explained that it is very common that interpreters, often without specialist training, once the interview is over, stigmatise the stories heard by women of their own country as an attack on the reputation of the country. Again: It is difficult to ensure that such prejudice has any impact on the quality of the translation. The role of the interpreter is usually perceived as a neutral and automatic, whilst it should help build bridges between systems that differ from a semantic and structural point of view, that of the interviewer and that of the interviewee.

When asked about gender-related persecution, only one interpreter was able to give examples. Only 2 interpreters were trained on gender-related persecutions. All of them expressed the need to receive adequate training on gender-related violence. All the interpreters interviewed highlighted tiredness and stress from hearing gender-related violence stories, often similar to their life experiences: "There is no supervision nor counsellor or other kind of intervention dedicated to our role as an interpreter... I feel the life stories I translate get under my skin every day and I think it should be mandatory a specific support and supervision, in order to better do our job."³⁰

Refugee Status determination process

The refugee status determination process has been widely affected by the spreading of the gender perspective thanks to the awareness-raising efforts of the UNHCR, active member of both NC and TCs. Gender-specific forms of persecution and gender-related persecution have progressively found recognition both as "acts which inflict severe pain and suffering" and as forms of persecution whether perpetrated by State or private actors (UNHCR, 2002). In Italy consequently we registered an increase of sensitiveness regarding the following gender-based violence types: female genital mutilation, even if past FGM does not result in an automatic granting or refusal of the asylum request; forced marriage, may amount to persecution or serious harm, in particular for the consequent behaviour of opposition, entitling to subsidiary protection; domestic violence, as a form of persecution, mainly entitles to humanitarian protection; honour crimes, may amount to persecution; trafficking, in particular related to Nigerian women, may amount to persecution and entitles women to refugee status because of the belonging of a particular social group. However, the denial rate remains very high: the recent case of 70 Nigerian women detained and most deported despite the lodging of an appeal against the asylum denial is a clear indication of underestimation of the seriousness of Nigerian women's conditions; and the specific 63 risk to suffer from re-trafficking which amounts to persecution. Forced abortion and sterilisation may amount to persecution. From the information collected From our experience of sheltering, researching and legal assistance, it emerges that women are disproportionately identified as a "particular social group" to be granted international protection. The prevalent outcome of women's asylum requests is humanitarian protection since they are considered as vulnerable subjects. In Italy, for a long time, TCs have given no reason for positive decisions and

³⁰ see *Differenza donna*, *GAPS* report, 2016,

http://www.gaps-differenzadonna.org/wordpress/wp-content/uploads/2016/03/GAPS_ENG.pdf

nowadays their reasoning remains very unelaborated. Negative decisions are accompanied with more articulated reasoning, although usually there is a lack of references to the criteria of credibility assessment applied to the concrete evaluated case. The arguments usually mentioned in the hearing outcome reproduce gender-based stereotypes (the most common is that on motherhood “it is not credible that the applicant left her child behind”, but also based on sexist prejudices, for instance, in the case of women speaking about their experience of prostitution). Credibility is weakened also by the difficulties to locate events in time and space, ignoring that this difficulty is typical of people who suffered specific forms of violence and persecutions, such as gender-based ones. The reasoning of the denials of refugee status often include not updated Country of Origin Information (COI) which usually lack deep and independent analysis of women’s condition in the country of origin. As it is noted by UNHCR, Country of origin information that has relevance to women’s claims should be collected, such as the position of women before the law, the political rights of women, the social and economic rights of women, the cultural and social mores of the country and consequences for non-adherence to them, the prevalence of such harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making a claim for refugee status.

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CHAPTER 3

Measures and services provided by the law for the protection of women GBV survivors

3.1 The Italian Reception System

The reception and accommodation of migrants and asylum-seekers in Italy seems to be done on highly confused grounds and inadequate ways. In the past years there has been an enhancement of the reception system, to respond to accommodation emergencies due to the elevated number of migrants arriving in Italy. It must be underlined that most centres have been operational for many years, although keep changing their nature and denominations due to changes in current national laws without any parallel structural updates and renovations. In fact, structures which previously were set up to accommodate migrants arriving to Italy have been transformed into detention centres; hotels and B&Bs into CAS centres; CARA centres into HUBS. The Italian legislators provide almost no guidelines on the reception system set up, and leave the management of centres to different private firms and NGO's with no particular skills and or qualifications in migration issues. In fact call for bids on managing reception centres are won on the solely basis of the lowest economic offer (Naga, 2016; Di Martino et al, 2013), without adequate consideration of the quality of services and operators' skills/capacity. In a context where emergency management perspectives prevail, attention to the individual needs are not taken into account and the population that suffers the consequences most are the vulnerable ones. In few reports compiled by different NGOs there is a courageous denouncement of the very poor reception conditions in the reception system but there is little mentioning of vulnerable people's conditions. To date we have no available data on how gender-based suffering women's needs are met and little we know on their presence in the reception centres. In different reports the presence of women victims of THB in the reception system is signalled and how their specific needs are not considered adequately. However nothing is known about women fleeing their countries for reasons such as forced marriages, FGM, etc.

Differenza Donna in Gaps (Boiano, I., et al., 2016) reported that the reception and accommodation systems in Italy lack of gender-based sensitive approach and services. According to this report, reception centres are often overcrowded, promiscuous and show limitations in the space available for assistance, legal advice and socialisation. Often, they are isolated and located far away from the main towns. Many women have difficulties to access accommodation and this exposes them to turn to alternative help making them vulnerable to violence and exploitation. Operators working in reception facilities also lack very often gender-based training.

The Italian reception system is featured by a different number of centres, some conceived to host migrants and asylum seekers at arrival in Italy, some created for a second level accommodation and others for identification, detention and deportation reasons. They are divided in first aid and reception centres (Hotspots, Hubs), temporary accommodation centres (CAS), and Italian system for the protection of asylum seekers and refugees (SPRAR).

3.1.1. Hotspots

Migrants are received upon their arrival in Italy in Hotspots (previously CPSA) where they are given first-aid medical treatments, their nationality is identified, and they are fingerprinted and photographed. In a second moment asylum seekers are transferred to Hubs, CAS and SPRAR centres, whereas those who have not asked for international protection or do not meet the requirements established by law for a regular stay in Italy are sent to centres for identification and expulsion (CIE).

The "hotspot" approach has been proposed by the European Commission aiming to manage the high numbers of mixed migrant flows arriving in member states. Italy, along with Greece, has been among the first countries to implement this approach. The Aida report (2017) signals the presence of four hotspots currently in Italy, hosting 355 migrants: Lampedusa, Pozzallo, Trapani and Taranto. However, there are five more which are about to be effective quite soon. According to the Aida report (2017, p. 20), Frontex helps with the identification, registration and fingerprinting of recently arrived people, enforcement of return decisions and collection of information on smuggling routes, while EASO helps with the processing of asylum claims and the eventual relocation procedure. UNHCR officers' presence in the "hotspot" should

monitor the situation. It is clear this system was conceived in order to spot, and separate asylum seekers from other types of migrant population, and deport those from the latter group who are not eligible to any kind of residence permit. Lascitecienrare (2017) reports how migrants are being deported towards countries with human rights violations. Moreover, both Aida (2017) and Lascitecienrare (2017) denounce poor conditions, detention and human rights violations in the Italian hotspots where force is being used for the identification process since many migrants refuse to get fingerprinted. Often dubiously quick assessments are carried out in order to identify asylum seekers from economic migrants such as asking them to indicate the reason why they came to Italy and to choose from a pool of four answers: to seek work; to escape poverty; to reunite with the family; to seek asylum. Except women victims of human trafficking, there are no updated reports regarding women survivors of gender-based violence present in the Italian hotspots. According to the Greta (2016) report the police procedures are fast and aiming to register and fingerprint migrants thus not able to detect women victims of THB and police forces do not have the necessary skills and training to carry out such identification. Although at the Pozzallo hotspot members of UNHCR and IOM Italy are present, they claim there is a lack of space and of qualified interpreters to carry out interviews aiming to identify women survivors of THB. At times of increased arrivals, the UN staff has delayed access to the centre making it very difficult to identify women victims of THB, although identification is essential at an early stage, before women are contacted and exploited by the criminal organisations which deceitfully brought them to Italy.

3.1.2 CAS

At hotspots migrants are divided into asylum-seekers and those who do not have the right to stay in Italy are notified to leave the country in 7 days. Asylum-seekers are sent to regional hubs and CAS centres. Hubs are centres where asylum-seekers are hosted waiting to be relocated in other EU countries. Whereas CAS structures host asylum-seekers, when there is no availability of places in the SPRAR system. Although they were designed as first level temporary centres often asylum-seekers are hosted for months in these structures. According to Lascitecienrare (2017) a majority of CAS centres lack of adequate living and hygienic conditions. Asylum-seekers do not receive necessary services that ensure not only integration into the Italian culture such as Italian language courses, vocational training but also services that guarantee well-being such as medical and psychological care. Often women victims of TBH are hosted in these structures along with other asylum-seekers, not being considered as members of vulnerable groups and thus not receiving adequate care and attention.

However, it is worth mentioning some good practices between the Differenza Donna NGO and few CAS and SPRAR centres located in Rome and Lazio Region. Since 2015 Differenza Donna collaborates with different Italian Territorial Commissions for Recognition of International Protection such as the ones in Rome and Frosinone in order to help identify and sustain women victims of THB by conducting interviews and including women in protection projects. The majority of these women are hosted in CAS centres with which Differenza Donna actively collaborates in order to better sustain women in a prospective of identification of THB indicators, integration into the Italian culture, access to health and psychological care. This collaboration helps also sensitising CAS operators with issues related to women victims of human trafficking, sexual and labour exploitation and their specific needs. Differenza Donna, along with other partners, which are part of the Anti-trafficking Lazio Network, and the Lazio region representatives, will soon start training sessions regarding women victims of THB to various CAS centres situated in Rome and Lazio.

3.1.3 SPRAR

The SPRAR system represents the second reception level for asylum-seekers. According to various reports from NGOs it is a system which provides better living conditions compared to the first level reception centres, more adequate spaces and services to support asylum-seekers in exercising their rights and integration into the Italian society such as legal and psychological counselling, Italian schooling, registration to the national Health Service. However, the quality of services seems to be different depending on the NGO which runs the structures (Aida, 2016).

3.1.4 Detention Centres

The acronym “CIE” in Italian stands for “Centro di identificazione ed espulsione” (Centre for Identification and Deportation). These centres were first established in 1998 following the approval by the centre-left government of the anti-immigration law known as “Turco-Napolitano”, from the name of its promoters. These centres, initially known as “Centri di permanenza temporanea” (Temporary Detention Centres), serve to detain “illegal” immigrants (i.e., those without papers) while the police identify them. The “Turco-Napolitano” law turned the “reception camps” into detention facilities. In 2002, a more restrictive law was passed: the so-called Bossi-Fini law. Moreover, in 2011 the same government passed a law that extended detention times to a maximum of 18 months, nine times longer than in the past.

Security package n. 94, approved in 2009, changed the name of CPT into CIE and introduced CDA and CARA. Last Immigration law amendments (Minniti Decree), renamed them “Centri permanenti di rimpatrio” (permanent centre of repatriation (CPR)).

Every immigrant caught without a residency permit, or not recognised as an asylum seeker, is taken to a CPR, identified and deported to his/her country of origin.

3.2. Practical Issues (Gaps and unmet needs)

Recently, even the UNHCR has complained about the conditions of refugees and migrants detained in Italy, many of whom are actually asylum seekers. Due to the rough living conditions, violent riots have been carried out by the people in these centres.

In the detention centres detainees are held in separated structures for men and women; structures are old without functioning heating and migrants are often in precarious hygienic conditions. They are not informed about their rights. Lawyers can normally enter the CIE, even if not at any time and sometimes they are denied the entrance without justification.

Just very few NGOs authorised to get in the CPR, like *Differenza Donna* have the possibility to meet detained women and explain them their rights and options they have when they are survivors of GBV.

Italian civil society has broadly denounced the violation of human rights committed in the detention centres: in 2013 the Extraordinary Commissioner for Human Rights of the Senate denounced the unrealistic planning, the poor conditions of the buildings, the low safety and the limited services of the CIEs. In 2014, Doctors Without Borders described the structures as inadequate and denounced the frequent cases of self-mutilation of the prisoners; in 2016 the member of the campaign “Lasciateci entrare”³¹ denounced the real conditions of migrants within the reception centres.

A further criticism is the total absence of information about the detention centres on the official website of the Ministry of Interior.³²

3.2.1 The Hotspots approach: relocation procedure

Part of the European Commission's European Agenda on Migration, the “hotspot” approach, is generally described as providing “operational solutions for emergency situations”, through a single place to swiftly process asylum applications, enforce return decisions and prosecute smuggling organisations through a platform of cooperation among the European Asylum Support Office (EASO), Frontex, Europol and Eurojust. Even though there is no precise definition of the “hotspot” approach, it is clear that it has become a fundamental feature of the Relocation procedures conducted by Italy and Greece in the framework of Council Decisions 2015/1523 and 2015/1601 of 14 and 22 September 2015 respectively. “Hotspots” managed by the competent authorities have not required new reception facilities, operating instead from already existing ones.

Hotspots had become a standard procedure applied to migrants, regardless of the existence or not of an ad hoc reception centre.

By using this procedure, migrants are detained without any court order, forced to be fingerprinted, and classified as asylum seekers or economic migrants depending on a summary assessment, mainly carried

³¹ <http://www.lasciatecientrare.it/j25/attachments/article/193/lasciateciEntrare%20rapporto%202016-2.pdf>

³² <http://www.canestrinilex.com/resources/international-protection-in-italy-asylum-humanitarian-assistance/>

out either by using questionnaires filled in by migrants at disembarkation, or by orally asking questions relating to the reason why they have come to Italy. In both cases, due to the lack of cultural mediators, there are no guarantees as to migrants' actual understanding of the process.

Following these operations, those identified as economic migrants are notified with a rejection / expulsion order and, where places are available in permanent centres for repatriation (CPR), people are often classified just solely on the basis of their nationality. Migrants from Nigeria, Gambia, Senegal, Morocco, Algerian and Tunisia are easily classified as economic migrants.

On 20 January 2016, at the hearing held in front of the Parliamentary Commission of inquiry on reception, identification and expulsion centres, the Head of Police, Alessandro Pansa said that the distinction of migrants between asylum seekers and economic migrants had been carried out based on the data collected through the "questionnaire" and with the help of cultural mediators, but had often been too hasty, partly because of large numbers, causing confusion and mistakes, but with no intention of preventing access to asylum applications or of enforcing rejections or mass expulsions. He pointed out that many unlawful rejections were overturned at the judicial level.

According to the Report published by the Senate Commission for the protection and promotion of human rights, that visited the hotspot of Lampedusa in January 2016, the pre-identification procedure was particularly critical. The Commission highlighted that most of the migrants pre-identified were not capable of properly filling the forms: the procedure was taking place when the refugees rescued at sea and just landed were often obviously still in shock following the long and risky journey, and many of them were unable to understand what was required, because mediators spoke only four languages and could not cover all the different areas of origin of the migrants.

The way the provisions related to the information obligation are applied determines the actual legitimacy of rejections but the limits of the Hotspot approach make it clear that people not properly informed and not channelled to the asylum procedure may be refused entry under a determined legal basis.

Particularly between October 2015 and January 2016, in Sicily, as recorded by ASGI lawyers and reported by some NGOs, Questure issued hundreds of deferred rejection orders. The orders had not been preceded by individual interviews and no copy was given to the persons concerned.

In Taranto as well, hundreds of people have been notified with such orders. As reported by ASGI, as of 7 December 2015 this happened, after disembarkation, to some 150 people coming from the Maghreb area, while a group of Nigerian people were immediately moved to expulsion centres based in Bari and Restinco, where they faced lack of defence against detention and many difficulties to formalise their asylum request.

On 3 August 2016, a Memorandum of Understanding was signed by the Italian and Sudanese police authorities. The agreement provides that, upon request, the Sudanese police collaborates in identifying and repatriating Sudanese nationals who have not applied for asylum. Implementing the agreement, Italy returned 40 Sudanese to Khartoum on 24 August 2016.

According to the information recorded by ASGI, these repatriations are likely to be considered collective expulsions as there has been no individual examination of their cases. The Sudanese nationals were arrested in Ventimiglia, where they had been moved after being rescued at sea and disembarked a few weeks before. They were detained for some days in a centre, different from a CIE, where a judge swiftly validated their expulsion, and then moved to the Taranto hotspot. They told ASGI that neither upon disembarkation nor later did they receive information on the asylum procedure and on the consequences of not applying for asylum.

3.3 Healthcare

Asylum seekers have the right to the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology. However, the majority of women do not enjoy health and well-being (Beijing declaration and platform for action, p. 55).

Gender-related violence is known to impact both women's physical and mental health. Common physical injuries are: physical injuries which can lead to disabilities, gastrointestinal conditions, chronic pain syndromes, chronic pelvic pain, sexually transmitted infections, including HIV; long term health problems and poor health status and so on (WHO, 2016). Women survivors of gender-related violence may experience mental health problems such as: depression, post-traumatic stress disorder, self-harm and suicide attempts, sleeping and eating disorders, poor self-esteem (WHO, 2016).

Asylum seeking women who have suffered gender-related violence face double health vulnerabilities. Physical and mental consequences of the violence they have suffered are exacerbated by consequences of forced displacement. It becomes imperative thus, for these women to be able to easily access gender-specific medical and psychological care. Most of the women we interviewed were offered psycho-social support since they sought help at the shelters run by *Differenza Donna*. Language barriers were overcome with the help of cultural mediators.

The law grants asylum seekers access to the Italian national health system. In order to do so, an asylum seeker needs to register at the civil status registry, which is quite complicated because of lack of residency. In Rome, some NGOs provide refugees with residence. Asylum seekers are also entitled to free medical care, although during this past year, in the Lazio region, this has been impossible due to a change in the regional law according to which this right is granted only to unemployed people, but not to those who have never been employed in Italy. Although the regional law grants exemption from paying fees to the asylum seekers, there seems to be a confusion related to this issue among medical professionals.

Participants in GAPS research complained about their access to medical treatment.

Women refugees and those entitled to subsidiary protection or humanitarian protection often have no information about the right to have access to free basic medical assistance from the Immigration office and for a long time they remain in a precarious situation, not having access to the healthcare they need.

Most of the women reported language barriers whenever they needed medical care and difficulties understanding the procedures related to the Italian National Health System.

3.4 Shelter and anti-violence centres

Since the 1990s, associations of women in Italy have started to create centres for the reception of women victims of violence (*centri antiviolenza*). Now, in Italy there are more than 115 anti-violence centres, 56 of them equipped with a shelter, the remaining are hot lines.³³ The main associations managing anti-violence centres and shelters in Italy have joined together and created a National network called *Di.R.E.* The National Association *D.i.R.e* (Women's Network against violence) was founded on the 29th of September 2008 and is the first Italian Association of independent women's centres and shelters against violence, whose aim is to constitute the first National Coalition to develop and promote the different experiences of all local centres against violence in Italy. It intends to coordinate and promote activities in order to start and facilitate a cultural change on violence against women in Italian society.

The main idea of cultural change is based on men's violence against women, gender differences and traditional ideas of family and society, still present today, and of inequality and differences in power between men and women in Italian society. *D.i.R.e* intends to analyse these cultural elements in an attempt to modify the perception of violence itself in society.³⁴ This network plays an important political and advocacy role in the national context with regard to all legal and practical issues related to GBV.

Although legislation in Italy provides for a comprehensive national plan against violence including a considerable amount of money to be allocated for preventing and combating violence against women, civil society associations' main difficulty is the funding.

Migrant women often find more obstacles to access anti-violence centres because of linguistic, cultural and economic barriers and also because of the fact that often their stay permit linked to the one of their partner makes their dependence on him stronger.

³³ <http://www.direcontrolaviolenza.it/i-centri-antiviolenza-in-italia/>

³⁴

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CHAPTER 4

Good practices for designing policies for the protection of victims of GBV in particular with regards the refugee/migrant women

1. Focus group on migrant women victims of GBV - Association *Differenza Donna ONG*-

DD operates with a feminist methodology i.e. using an approach focused on the valorisation of women's knowledge and the experiences with the aim of empowering women and relationships among women, considering women's empowerment as our main operation tool and assuming gender as the category of analysis. Within DD's perspective focus groups a data collection method which allows to ensure rigorous grounds to experience-based research and reporting activities.

2. Characteristics and methodology of focus groups

Aims. In order to collect gaps and good practices to prevent SGBV against migrant and refugee women we designed focus groups on the basis of the following research issues:

- Level of access to the right of information
- Level of access to reception and accommodation
- Level of access to justice and international protection
- Level of exposure to SGBV
- Level of access to SGBV services
- Level of access to healthcare services
- Level of access to education and jobs

Number of focus groups conducted: 1.

Participants. DD organised 1 focus group composed as it follows:

- **Selection:** participants were selected among women's shelters operators, women's rights activists and lawyers working both as members of DD and as independent experts; public and private stakeholders dealing with reception, counselling and assistance to migrant and refugee women with a minimum of 2 years of field experience.
- **Number of participants per group** –focus groups involved 15 people. People involved were the following:

Elisa Ercoli (President and legal representative of DD); Ilaria Boiano (lawyer and DD's referent for immigration); Loredana De Rosa (coordinator of a DD shelter); Migena Lahi (coordinator of DD shelter for women victims of trafficking); Valentina Pescetti (responsible for empowerment projects for women); Sabrina Frasca (responsible for training and projects for DD); Brunella Fraleoni, Cristina

Germani, Arianna Gentili, Alexandra Di Giuseppe (operators of DD shelters for women victims of violence); Fereshteh Rezaeifar, Aleksandra Milosevic, Lucia Celant (operator of DD shelter and of CIE help desk); Micaela Cacciapuoti (operator of DD listen point of Hospital First Aid); Marta Cigna (lawyer).

- **Work method:** the focus groups were based on semi-structured discussion process.
- **Level of moderator involvement:** there were 2 moderators, the first one charged of focusing the discussion process on the research questions, the second one charged of timing the discussion.
- **Recording focus group data:** One of the challenges in recording focus group data is knowing who is speaking at any particular time, since often multiple people speak in overlap. In order to ensure effective discussion process we decided to recording by means of a synthetic written transcription.

2. Outcomes of the focus groups

The focus group in general

- produced a large amount of data on the investigated topics in a very short time,
- allowed access to aspects that might be otherwise unobservable, thanks to the comparisons that focus group participants make between their experiences. This can be very valuable and provide not only the information required, but it encourages a first level of mutual learning and improvement of action.

In particular, it unveiled the following critical Issues, according to the research questions:

- a) Migrant women have no information about their rights: women belonging to disadvantaged groups, such as migrant, asylum-seeking, refugee, Roma, Sinti women lack the information necessary to claim their rights. Very often, these women are informed about the legal actions available to claim their rights just when they have the chance to meet associations from civil society (often just when they are detained at the CPR).
- b) Lack of specialisation of police force: in many cases failure to properly identify victims of human trafficking and GBV survivors means that, instead of receiving appropriate protection, these victims are confined in centres of administrative detention for irregular migrants or exposed at very serious second victimisation. In fact, priority is given to the restriction of irregular migration rather than promoting the identification and support of survivors of THB and GBV. In this sense, for example, GBV migrant survivors are targeted as irregular migrant when they report GBV and deported, instead of receiving adequate protection and assistance.
- c) Lack of coordination with the NGOs and other civil society organisation in the recognition of women victims of trafficking: for a proper identification of a woman victim of trafficking it is important to take into consideration that the strict dependence of victims to criminal networks of traffickers makes impossible for victims to recognise themselves as victims of trafficking (self-identification) and, consequently, there are repercussions for the credibility of victims' statements before Territorial Commission. Young women and girls are often not in a position to provide sufficient and consistent information of their experiences. The strategy of traffickers to ensure that the victims remain in Italy is to make them claim asylum, which gives the right to a residence permit.
- d) Lack of specialisation in theme of GBV prevention and protection of reception operators, police officers, social workers expose migrant and asylum seeker women to further gender based violence both in public and private spheres.
- e) Women should be granted autonomous permit of stay even in case of family permit of stay. In fact, the most common fear for foreign women is to be denied by their spouse or parent the cooperation need to the issuing or renewal of the to permit of stay and to be consequently repatriated. the lack of autonomous permit of stay is a concrete obstacle to report GBV in intimate relationship.

- f) Access to justice: in order to obtain protection according to art. 18 and 18 bis Immigration law, women are de facto compelled to lodge a criminal complaint, also in case of THB survivors, despite the article 18 Immigration Law (for THB survivors) does not require the criminal proceeding.
- g) Precarious health conditions in CPR: healthcare is not sufficiently granted in detained centres and reception centres where living conditions are precarious. In some cases, women who suffered female genital mutilation (FGM) and reported it to the medical staff of the centres did not receive any medical certification, which could have been useful for the asylum evaluation process.
- h) Lack of reception centres and resources for victims of human trafficking: the current serious shortage of places exposes women to the risk of being re-trafficked and re-victimised.

From these critical issues discussed in the focus groups, the participants converged to the following recommendations

- **Access to the right of information**: Enhance women's awareness of their rights and the remedies available to them to claim violations of such rights since their first arrival in the Centre of First Aid and Reception Centres (hotspots). In the first phase of identification it could be already possible to recognise victims of THB or other GBV entitling them to international protection; in this sense it is important: (a) to ensure that there are appropriate facilities for holding confidential interviews with a view to identifying survivors of THB and GBV in hotspots and other places where asylum seekers and migrants are held: (b) strengthening multi-agency involvement in victim identification by introducing a National Referral Mechanism and further involving NGOs and international organisations in the identification of victims of trafficking, including by giving them expanded access to hotspots, reception centres and CIE.
- **Access to reception and accommodation**: increase the number of available places in reception centres and ensure adequate reception standards for refugees and asylum seekers, with particular attention to the needs of women and girls, strictly observing the principle of non-refoulement for all women and girls in need of international protection according to an individualised risk assessment in line with the National Plan on Trafficking in Human Beings (NPA) and Istanbul Convention.
- **Access to justice and international protection**: enhance the social path option provided for in article 18 T.U. Imm by de-linking victims' protection from their co-operation with police activities and investigations; extend to three years the duration of the residence permit for social protection purposes pursuant to article 18 T.U. Imm since the current six-month extension period is inadequate to ensure that victims have sufficient time to process and overcome their trauma and to adapt to new circumstances in the Italian context. It would be important as well to extend the possibility of obtaining a residence permit for family reunification to kins of victims of trafficking who are exposed to the risk of retaliation from traffickers in their country of origin, and scrap current constraints to such reunification procedures pertaining to the degree of kinship, housing capacity and income.
- **Access to services**: the capacity of GBV survivors support programmes, both for adult and for children, needs to be increased and strengthened as a matter of priority.