



Organization for Security and Co-operation in Europe

Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Italy from 17-18 June and 15-19 July 2013

Introduction

1. The present Report is based on a visit to Italy by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro (hereinafter referred to as the Special Representative) from 17-18 June and 15-19 July 2013.¹ This was the first visit of the Special Representative to Italy and as such afforded an important opportunity to meet with key state and civil society stakeholders in all fields related to anti-trafficking work in Italy and to learn from the Italian experience to date. During her visit, the Special Representative (SR) met national counterparts and local authorities from various regions of Italy in Rome.²

2. In the course of this visit, the Special Representative held discussions with national authorities and institutions, including Pietro Grasso, President of the Senate; Laura Boldrini, President of the Chamber of Deputies; Emma Bonino, Minister of Foreign Affairs; Anna Maria Cancellieri, Minister of Justice³, Enrico Giovannini, Minister of Labour and Social Policies; Cecilia Guerra, Vice Minister of Labour and Social Policies, in charge of the co-ordination of anti-trafficking activities; Cécile Kyenge, Minister for Integration; and high-level representatives of the Italian Presidency and the Ministry of Internal Affairs.⁴

3. The Special Representative also met with the Acting Anti-Mafia National Prosecutor who hosted a joint meeting with district anti-mafia prosecutors and various specialized law enforcement agencies.

4. She also paid a visit to a Centre for Identification and Expulsion (CIE). The Special Representative, who emphasized the role of non-governmental organizations and civil society as crucial partners in the fight against trafficking in human beings (THB), held discussions with civil society representatives working

¹ During her visit, the Special Representative was accompanied by Ms. Teresa Albano, Ms. Astrid Ganterer and Ms. Rosalia Bollen.

² Civil society organizations and local authorities from the following regions/provinces attended the meetings: Lombardia, Friuli-Venezia Giulia, Veneto, Marche (Martinsicuro), Emilia-Romagna, Umbria, Toscana, Lazio (Rome), Campania (Naples). The national NGO co-ordination Platform attended in addition to specific NGOs.

³ The meeting with the Minister of Justice, originally scheduled for 16 July, was postponed and held on 5 September 2013.

⁴ See Annex II for the agenda of meetings held by the Special Representative during the visit. See also the OSCE press release of the country visit at: <<http://www.osce.org/cthb/103751>> accessed 13 December 2013.

across Italy, including trade unions and associations such as On The Road, Cooperativa lotta contro l'emarginazione CNCA, Caritas Italia, Cooperativa Sociale Dedalus, Centro Caritas dell'Arcidiocesi di Udine, Ora D'Aria, Associazione Interculturale Etnoblog Trieste, Virtus Italia, Centro Studi e Ricerche sulle Realtà Meridionali Potenza, Confederazione Generale Italiana del Lavoro, Differenza Donna, Associazione Studi Giuridici sull'Immigrazione, Associazione Pronto Donna, Cooperativa Be Free, Associazione Donne Lavoratrici Ucraine in Italia, Federazione Chiese Evangeliche in Italia, Doina ONLUS Moldavi in Italia, Centro Donna Giustizia, Persone in Movimento, Associazione Geordie Onlus, Associazione Tuscolana Solidarietà, Associazioni Cristiane Lavoratori Italiani COLF, Magliana 80 and Cooperativa Sociale PARSEC.

5. Finally, during her country visit, the Special Representative spoke at a panel discussion on human trafficking organized by the President of the Chamber of Deputies and held a restricted hearing with the Sub-Committees for Equal Opportunities and Security at the Senate's Commission for Constitutional Affairs.⁵

6. The Special Representative wishes to thank the Italian authorities, and in particular the Permanent Mission of Italy to the OSCE and the Directorate General for Political Affairs and Security and its OSCE Office at the Ministry of Foreign Affairs, for their excellent assistance in facilitating the organization of the visit and its implementation, including local travel. She also wishes to thank all of her interlocutors for their willingness to share their knowledge and insights with her. Consultations during the visit focused on the legislative, policy and operational responses to the THB situation in the country, particularly in the area of the prevention of labour exploitation and victims' access to assistance, justice and effective remedies which are among the priorities established by the Special Representative during her term.⁶

7. In 2003 the Italian criminal code was amended by the law no. 228/2003 revising articles 600 "Placing or holding a person in condition of slavery or servitude", 601 "Trafficking in human beings" and 602 "Purchase and sale of slaves". This legal reform aimed at bringing the relevant provisions in line with international anti-trafficking instruments⁷. The ratification of the United Nations

⁵ For the video of the panel discussion at the Italian Chamber of Deputies see: <<http://webtv.camera.it/portal/portal/default/Eventi/Dettaglio?IdEvento=5874>>, accessed 14 August 2013.

⁶ See: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (December 2011): a special thematic addendum to the 2011 Annual Report of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings; OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008); OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Non-Discrimination and Empowerment* (December 2012).

⁷ Law no. 228/2003, in Italian and English at <<http://legislationline.org/documents/action/popup/id/4970>>, accessed 3 October 2013, revising the articles of the Italian Criminal Code adapting the concept of slavery to modern forms of slavery-like conditions and trafficking for the purpose of exploitation in line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children.

Convention on Transnational Organized Crime and its Protocols was then completed with law no. 146/2006 that attributed to the Anti-mafia authorities the competence to prosecute trafficking-related cases.⁸ The Special Representative welcomes the continuous and robust efforts of the Anti-Mafia prosecutorial authorities: according to the data of the National Anti-Mafia Directorate, only in the year 2012, 143 criminal proceedings were carried out for offences related to art. 600; 66 for art. 601; and 5 for art. 602. In this respect, the Special Representative called for increased co-operation amongst prosecutorial authorities, and in particular between ordinary and anti-mafia prosecutors' offices due to the fact that in Italy, investigations into human trafficking and migrants' smuggling fall under the competence of different investigative bodies: trafficking cases under the District Anti-Mafia Directorates and smuggling cases under the ordinary offices of the prosecutors of the Republic. As trafficking and smuggling are often inter-twined, enhanced co-operation and exchange of information would ensure a more comprehensive approach. In this regard, she encourages the Italian competent authorities to enhance opportunities for capacity building, targeting judicial authorities, including exchange of experiences and practices at the national, EU and international levels. The Special Representative also takes note of the concerns expressed by a number of prosecutors during the meeting held during her visit, regarding the current formulation of art. 600 and 601 and their applicability to cases of labour exploitation. In particular, such concerns are related to the narrow and vague formulation of "the situation of continuous subjection" as envisaged by art. 600 of the Criminal Code. The Special Representative recognizes that a situation of "continuous subjugation" could be difficult to identify and to prove, especially in cases of trafficking for labour exploitation, when the subjugation may be achieved through debt bondage and/or psychological manipulation. In order to create an environment that is hostile to human trafficking and ready to act against it, it is necessary to address the whole spectrum of exploitative practices. The Special Representative welcomes the introduction of the new art. 603-bis through law no. 148/2011, envisaging the crime of "unlawful gangmastering and labour exploitation" in the Italian Criminal Code, as well as the introduction of the relevant aggravating circumstances through legislative Decree no. 109 of 16 July 2012, transposing the EU directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.⁹ Although these pieces of legislation represent a positive development, the Special Representative notes that art. 603-bis targets primarily abusive intermediaries but not abusive employers.¹⁰

⁸ Law no. 146/2006: "Ratification and implementation of the Convention and the Protocols of the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001, <<http://www.parlamento.it/parlam/leggi/061461.htm>>, accessed 3 October 2013.

⁹ European Union (EU), *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals* (18 June 2009), in Official Journal L 168/24, 30.6.2009, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>>, accessed 12 December 2013.

¹⁰ See, *inter alia*: Amnesty International, *Exploited Labour. Migrant Workers in Italy's Agricultural Sector* (2012), <<https://www.amnesty.org/ar/library/asset/EUR30/020/2012/en/bb31a7ab-6537-43f8-92a8-c7b1f484198a/eur300202012en.pdf>>, accessed 3 October 2013.

8. Judicial and police transnational co-operation is key to address the whole criminal network in transnational human trafficking cases. The Special Representative appreciates the ongoing efforts of transnational co-operation, particularly with some origin and transit countries such as Romania, Bulgaria, Poland and Albania¹¹. In this context she encourages the Italian authorities to transpose the EU Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA)¹² as an effective tool to enhance police and judicial co-operation at the EU level.

9. The Special Representative expresses her appreciation for the forward-looking approach of Art. 18 of the Italian Immigration Law, adopted in 1998¹³, at a very early stage of international efforts in the fight against human trafficking. The Italian Immigration Law (Law no. 286/98) introduced an innovative provision regarding the issuance of a residence permit on social protection grounds both in case of a victim's co-operation with law enforcement agencies and judicial authorities and in cases in which the person concerned is not willing or ready to report or act as a witness (art. 18, law no. 286/98).¹⁴ The Special Representative praises this comprehensive approach to victim protection as a good practice and a model. The Special Representative, however, highlights that civil society actors report a very weak implementation of the unconditional option (so-called social path): the granting of a residence permit has been made *de facto* conditional on a victim's co-operation in criminal proceedings. Such implementation practices nullify the innovative nature and added value of this provision. In this respect, it is impossible to evaluate the level of implementation of the social path, as official documents do not report any data on victims who received residence permits regardless of their co-operation with law enforcement and judicial authorities. The Special Representative, therefore, urges the Italian authorities to renew their efforts to ensure full and correct implementation of the existing legislation, especially regarding its most innovative aspects.

10. Identification and assistance to victims of trafficking remain among the main challenges in the OSCE region. In this regard, the Special Representative notes that across the OSCE area, the contribution of NGOs is often critical to promote victim identification and assistance including access to justice, and to increase the effectiveness of prosecution of traffickers, criminal intermediaries and final exploiters. She praises the recognition of the role of civil society actors in the identification of victims of trafficking. In fact art. 18 para. 1 of law no. 286/1998

¹¹ According to Carabinieri ROS (Raggruppamento Operativo Speciale – Specialized Operational Unit) transnational police co-operation with these countries has been successful. In this respect, see the 2006 report of the Ministry of Interior: <http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/16/0852_relazione_parlamento_2006.pdf>, accessed 3 October 2013.

¹² EU Council Framework Decision of 13 June 2002 on joint investigation teams, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0465:EN:HTML>> accessed on 3 October 2013.

¹³ Immigration Law n. 286/98, art. 18, in Italian and English (unofficial translation) at: <<http://legislationline.org/documents/action/popup/id/4791>> accessed on 3 October 2013.

¹⁴ Paragraph 1 of art. 18 law 286/1998, in Italian and English (unofficial translation) at <<http://legislationline.org/documents/action/popup/id/4948>> accessed on 10 October 2013 as well as art. 27 of D.P.R. 394/99, Implementing Regulations of the Immigration law, <<http://www.gfbv.it/3dossier/diritto/DPR-394-99.html>> (only in Italian) accessed on 12 December.

(Immigration Law) recognizes the importance of outreach measures carried out by public welfare services and NGOs targeting at-risk groups.¹⁵

11. The Special Representative emphasizes that one important tool to enhance victim identification and referral for assistance is to establish a comprehensive National Referral Mechanism (NRM), providing a framework for co-operation between all relevant actors from the State and civil society, aimed at identifying victims and assisting them to claim their rights as well as preventing trafficking and bringing the offenders to justice.¹⁶ In this respect, a Memorandum of Understanding (MoU) can be an important step to further enhance relationships between State actors and civil society. The Special Representative welcomes MoUs for the identification and referral of victims signed by law enforcement agencies, judicial authorities, public welfare services and NGOs established in some areas of Italy.¹⁷ The Special Representative notes that while informal co-operation can be effective in individual cases, experience throughout the OSCE region shows that appropriate procedures are needed to ensure coherence and continuity. Such procedures must be transparent, inclusive, and consistent across the national territory. She therefore urges the Italian authorities to establish a system of referral of trafficked persons at the national and local level. She acknowledges that Italy can rely on a solid backbone of institutions and organizations specialized in assisting victims of trafficking, including public welfare services, civil society associations and NGOs. Such a network is an asset to the Italian system of victim assistance and protection, and has played a leading role in designing and implementing anti-trafficking actions over the past 15 years. Therefore she encourages the Italian authorities to ensure continuous and adequate financial support to public and civil society service providers.

12. Although human trafficking for sexual exploitation remains significant in Italy, the Special Representative notes that labour exploitation is an increasingly emerging practice in the country as well as in the whole OSCE region, according to recent investigations and researches.¹⁸ In this respect, she praises the implementation of art. 18 of law no. 286/1998 (Immigration Law) to cases of

¹⁵ Ibid.

¹⁶ See OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Chapter V “Protection and Assistance”, paragraph 3. See also OSCE ODIHR, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (Warsaw, 2004), <<http://www.osce.org/odihhr/13967>>, accessed 11 June 2013.

¹⁷ According to the data of the Anti-mafia National Directorate, the following MoUs are currently subscribed at the national level: Court of Appeal, Rome, subscribed on 1/12/2011; Reggio Calabria, subscribed on 4/06/2010 that supersedes the previous one on 11/5/2005; Palermo, subscribed on 21/10/2005 and integrated on 23/02/2010; Campobasso, subscribed on 25/01/2005 and integrated on 17/6/2009; Bologna, subscribed on 12/02/2009; Perugia, subscribed on 4/05/2005 + integrating Note from General Prosecutor’s Office on 8/1/2009; Potenza, subscribed on 10/06/2008; L’Aquila, subscribed on 22/6/2005; Florence, subscribed on 27/05/2005; Lecce, subscribed on 1/04/2005; Naples, subscribed on 7/10/2004; Catania, subscribed on 5/7/2004; at the Republic’s Prosecutor’s Office, Court of Teramo, subscription of “Guidelines for approaching victims of trafficking and exploitation” on 28/04/2010 improving the already existing MoU signed in 2005.

¹⁸ International Labour Office, *Global Estimate of Forced Labour. Results and methodology* (ILO, Geneva, 2012).

forced labour and violence in the workplace,¹⁹ which is mirrored by the number of victims assisted for this form of exploitation: 346 in 2011 and 271 in 2012, according to the Department for Equal Opportunities.²⁰ Taking into account their crucial role in reaching out, identifying and protecting trafficked persons, the Special Representative invites public and civil society service providers to enhance their assistance in order to meet the diverse needs of trafficked persons - men, women and children – in relation to different forms of exploitation. In this regard, the Special Representative calls for the involvement of a wide range of stakeholders in prevention, outreach and assistance measures targeting trafficked and exploited workers, such as trade unions and “*Patronati*”²¹, including migrants’ associations and especially the diaspora.

13. The Special Representative was pleased to learn more about the efforts that Italy has undertaken in the fight against labour exploitation also through the action of labour inspectors and the Carabinieri specialized unit based in the Ministry of Labour and Social Policies²². 21,701 inspections were carried out in 2012, and 13,704 in the first semester of 2013 alone; in the course of such inspections, 76,391 workers’ conditions were checked in 2012 and 41,402 in the first semester of 2013; 802 persons were investigated for exploitation of irregular foreign workforce in 2012, and 312 in the first semester of 2013.²³ In this respect, the Special Representative invites the Italian Ministry of Labour and Social Policies and the Ministry of Interior to monitor the 2012 amnesty linked to the transposition of the EU directive 2009/52/EC²⁴, targeting the employers of undocumented migrant workers in irregular working conditions, as well as the application of legislative Decree no. 109 of 16 July 2012, also with a view to ensuring that irregular migrant workers who denounce exploitative employers are assisted and not punished.²⁵

¹⁹ The Ministry of Interior’s circular letter on 4 August 2007 extended the applicability of art. 18 law no. 286/98 to cases of labour exploitation and forced labour.

²⁰ In the same period, the same source reports 1,402 and 1,103 cases of sexual exploitation. For all data collected by the Department of Equal Opportunities, see: <http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/IL_Dipartimento/tratta/Dati3_tratta.pdf>, accessed 3 October 2013

²¹ “*Patronato*” is an Italian private law entity of public utility for the protection of workers’ rights, both nationals and migrants.

²² Carabinieri NIL, Nucleo Ispettorato Lavoro, <http://www.carabinieri.it/Internet/Cittadino/Informazioni/Tutela/Lavoro/05_Ispettorato.htm>, accessed 12 December 2013 (in Italian).

²³ Data provided by the Head of the Office for International Relations, Col. Giuseppe Battaglia, in October 2013, Carabinieri General Headquarters.

²⁴ European Union (EU), *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals* (18 June 2009), in Official Journal L 168/24, 30.6.2009, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>>, accessed 12 December 2013.

²⁵ Platform for International Co-operation on Undocumented Migrants (PICUM), *Ten Ways to Protect Undocumented Workers* (2005), <<http://picum.org/picum.org/uploads/publication/Ten%20Ways%20to%20Protect%20Undocumented%20Migrant%20Workers%20EN.pdf>>, accessed 3 October 2013; OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (Vienna, 2011).

14. The Italian assistance and protection system has produced outstanding results and represents a benchmark at international level. This model of intervention has, in fact, allowed institutions and civil society organizations to assist 65,000 persons between 2000 and 2012, of whom 21,378 received a residence permit, according to the data of the Department of Equal Opportunities.²⁶ According to the data of the Public Security Department of the Ministry of Interior, an average of 400-500 new residence permits have been issued each year between 2004 and 2012.²⁷ The Special Representative praises the combination of forward-looking laws, the allocation of appropriate financial resources and the active role of the civil society as critical factors that have enabled thousands of trafficking victims to receive assistance in Italy since 2000. In this regard, she notes with deep concern that at the time of her visit, this assistance model was running a real risk of being shut down as a consequence of a serious delay in the allocation of funds for assistance measures, possibly leading to a suspension of the national calls for proposals for the first assistance measures (art. 13 law no. 228/03) and long-term social inclusion measures (art. 18 law n. 286/98). To date²⁸ such an emergency has not been solved. The Special Representative urges the Italian authorities to ensure funding for the system of assistance to victims of trafficking. In this respect, she also calls on the Italian authorities to implement art. 12 of law no. 228/03 which envisages the creation of a State fund for victim assistance measures to be sustained through confiscated assets and proceeds of perpetrators.

15. Considering the complexity of the trafficking phenomenon and the challenges related to mixed migration flows²⁹ in Italy, the Special Representative expresses her concern for the increasing vulnerability to human trafficking of persons on the move via sea, land and air, due to Italy's geographic position as one of the main Southern entry points to the EU.³⁰ She therefore urges Italian authorities to ensure legal counseling and orientation services at an early stage of the identity checks, particularly in the facilities where undocumented foreigners are held pending their identification, including in CDA³¹, CARA³² and CIE³³. She therefore encourages

²⁶ Data from the Equal Opportunities Department can be accessed at the following link: <http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/II_Dipartimento/tratt_a/Dati3_tratta.pdf>, accessed 3 October 2013.

²⁷ Data of the Ministry of Interior, Public Security Department of the State Police, provided in December 2011 in the framework of the IOM research activities related to the EU project "FIIT, Fostering Integration and Inclusion of Trafficked Persons", carried out in five EU Member States: Belgium, France, Hungary, Italy and the UK.

²⁸ This report was finalized on 26 February 2014.

²⁹ According to UNHCR, mixed migration flows are "A movement in which a number of persons are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation." Also referred to as mixed movements or mixed migration." Source: UNHCR, *Refugee Protection and Mixed Migration: the 10-Point Plan in Action* (Geneva, 2011), p. 291.

³⁰ See *inter alia* OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Enhancing Co-operation to Prevent Trafficking in Human Beings in the Mediterranean Region* (Vienna, 2013), <<http://www.osce.org/cthb/108481>>, accessed 2 December 2013

³¹ CDA, Reception Centres (Centri Di Accoglienza), Law no. 563/95, emergency and first assistance centres. Migrants are kept in these facilities for the time necessary to establish identity, legitimacy of entry and possible immediate removal to the country of origin.

³² CARA, Reception Centres for Asylum Seekers (Centro di Accoglienza per Richiedenti Asilo),

governmental and local institutions to envisage *ad hoc* outreach measures in these facilities, formalize the co-operation with specialized associations/NGOs and service providers and include them into the National Referral Mechanism. She also suggests that all staff, in particular social workers and law enforcement officials working in these facilities, are trained and tasked to detect indicators of abuse and exploitation and to refer presumed victims for assistance to service providers, including law practitioners for legal counseling. The Special Representative believes that especially concerning CIEs, a radical revision is needed that should include a substantial reduction of the maximum duration of migrants' retention, better quality of accommodation and healthcare services, and transparent organizational procedures, as well as the concrete possibility for apprehended migrants³⁴ to receive information on their rights and legal counseling by independent lawyers. Such measures are also crucial to prevent trafficking in human beings, since migrants could report exploitation and abuse if they were adequately treated and enabled to claim their rights.

16. Regarding child trafficking, according to the Department for Equal Opportunities, children constitute five per cent of the total number of cases of assisted victims of trafficking. The Special Representative notes a significant increase in the percentage of children between 2011 (3.2 per cent) and 2012 (6.9 per cent) and wishes that greater attention be paid to the needs of child victims of trafficking.³⁵ The Special Representative also notes that Italy has developed an advanced system for the protection of unaccompanied children, and a co-ordinating body tasked with supervising the reception and social inclusion of this vulnerable group.³⁶ She also notes that a specific protection system has been set up for children seeking international protection.³⁷ The Special Representative encourages Italian authorities to increase co-ordination among different systems of protection of vulnerable children. In particular, the Special Representative

(DPR 303/2004 - D. Lgs. 28/1/2008 no. 25, are open facilities where asylum seekers are hosted pending the processing of their asylum requests for a period of 25-30 days.

³³ CIE, Identification and Expulsion Centres (Centri di Identificazione ed Espulsione), legislative decree 23 May 2008, no. 92 and art. 14 law no. 286/1998, are closed facilities where undocumented migrants are hosted from 180 days to 18 months, pending their identification prior their forced removal to the country of origin.

³⁴ Apprehended migrants are undocumented, irregular migrants under administrative detention. See *inter alia*: Fundamental Rights Agency (FRA), "Apprehension of migrants in an irregular situation – fundamental rights considerations", <http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf>, and <<http://fra.europa.eu/en/news/2012/fundamental-rights-considerations-apprehending-irregular-migrants>>, accessed 30 January 2014.

³⁵ Data from the Equal Opportunities Department can be accessed at the following link: <http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/Il_Dipartimento/tratt_a/Dati3_tratta.pdf>, accessed 3 October 2013.

³⁶ According to Art. 31-33 Aliens' law no. 286/1998, a residence permit is issued to all foreign minors identified as such who are not accompanied by a member of the family within the 4th grade and who do not request asylum/international protection. This residence permit is issued due to their age as a form of protection of foreign children on the move who are not asylum seekers. The co-ordinating, inter-institutional body is the Committee for Unaccompanied, Foreign Minors.

³⁷ SPRAR, Sistema di Protezione per Richiedenti Asilo e Rifugiati: The system of protection for asylum seekers and refugees (SPRAR) is the network of local authorities active in carrying out projects of integrated reception – funded, within the limits of available resources, by the National Fund for Asylum Policies and Services, <<http://www.serviziocentrale.it/?SPRAR&i=2&s=2>>, accessed on 9 October 2013.

expresses her concerns regarding the need to ensure the non-punishment of child victims, especially those involved in illegal and criminal activities, in line with international instruments and OSCE commitments³⁸, and the importance of securing access to compensation for material and moral damages suffered by child victims.³⁹ She therefore encourages governmental and non-governmental actors to foster joint capacity building measures to enhance responses to the specific needs and vulnerabilities of minors on the move, taking into account that still an alarming portion of minors disappear within the first two weeks upon arrival in the country, particularly those reaching Italy via sea in the South.⁴⁰ The Special Representative suggests conducting research looking into child trafficking with a special focus on emerging forms of exploitation, such as the involvement in forced criminal activities - like begging and drug distribution - forced marriage, forced labour as well as sexual exploitation of male minors, taking advantage of experience across the OSCE region. She emphasizes the need to strengthen the current system of child protection, and the overall child care strategy and tackle any type of exploitation and violence against children, child abuse or neglect.

17. Victims' access to justice and remedies, including compensation, has been a priority for the Special Representative both as a preventive and protective measure as it empowers victims and deters exploitation.⁴¹ She also recognizes that a precondition for access to justice is the provision of free and qualified legal assistance. Good practices across the OSCE region show that victim identification is effective in cases where civil society organizations have early and effective access to vulnerable groups and play an active role in reaching out to and identifying victims. Furthermore, the Special Representative emphasizes that ensuring free and specialized legal counseling and representation as well as making compensation a reality for every trafficked and exploited person is a critical aspect of an empowerment strategy that enables trafficked persons to move forward with their lives and prevents re-trafficking. In this respect, the Special Representative calls on Italian governmental and non-governmental actors to enhance concrete measures to foster the access of victims to free legal assistance.⁴² She acknowledges that Italy has a legal aid mechanism in place for

³⁸ OSCE Ministerial Council, *Decision No. 13/04 on the Special Needs for Child Victims of Trafficking for Protection and Assistance* (Sofia, 2004); OSCE Permanent Council, *Decision no. 685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance* (Vienna, 7 July 2005); OSCE Ministerial Council, *Decision No. 9/07 Combating Sexual Exploitation of Children on the Internet* (Madrid, 2007); OSCE Ministerial Council, *Decision No. 15/06 Combating Sexual Exploitation of Children* (Brussels, 2006); OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (Vienna, 2013).

³⁹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008).

⁴⁰ According to the 2012 IV ANCI CITTALIA report on foreign unaccompanied minors, four minors out of five reaching Italy via sea disappear within the first two weeks. This phenomenon affects particularly southern sea borders and regions. See: *I minori stranieri non accompagnati in Italia, IV rapporto ANCI CITTALIA* (Roma, 2012) at: <http://www.anci.it/Contenuti/Allegati/I_Minori_Stranieri_2012.pdf>, accessed 3 October 2013.

⁴¹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Op. Cit.*

⁴² Art. 12 of the EU Parliament directive 2011/36/EU and art. 15 of the CoE Convention on Action Against Trafficking in Human Beings; OSCE Ministerial Council, *Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1* (Vilnius, 2011); OSCE

victims of crime and that a number of specialized non-governmental organizations provide legal assistance to victims of crime. In this regard, she also underlines that little is reported and documented in relation to victims' effective access to legal assistance and representation as well as compensation.⁴³ The Special Representative believes that greater attention should be given to ensure that trafficked and exploited persons can access compensation for both material and immaterial damages.⁴⁴ She welcomes as a promising precedent the recent L'Aquila High Court decision that awarded compensation to victims of trafficking amounting to EUR 50,000 per victim and 350,000 in total.⁴⁵ In this respect, the Special Representative encourages the use of financial investigations in human trafficking cases, aimed at ensuring the confiscation of criminal proceeds and assets, as a measure to ensure compensation to victims.⁴⁶ In this respect, the Special Representative calls on the Italian authorities to establish a State-based compensation mechanism for victims of trafficking.⁴⁷ The Special Representative notes that in this context, the project "European Action for Compensation for Trafficked Persons (COMP.ACT Europe)", which her Office has supported, has produced a number of studies and useful tools aimed at enhancing victims' access to compensation.⁴⁸ The Special Representative also calls on judicial actors to make full use of art. 6 of the EU directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals⁴⁹ and to ensure the back payment of outstanding remuneration to exploited workers. Such measures would complement the criminal justice response and put in place additional tools, i.e. labour and civil law tools, particularly useful in those cases that might not be qualified as trafficking but still be addressed through other means. She also

Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007).

⁴³ One of the few reports available was carried out in the framework of the COMP.ACT project: "Development of Italian legislation on compensation: State of art and strategies", available on <<http://lastradainternational.org/lsidocs/COMP%20ACT%20Italy.pdf>>, accessed 3 October 2013.

⁴⁴ Compensation for crime victims applies to both material and immaterial damages, art. 2043 of the Italian Civil Code, see also Constitutional Court Sentence no. 233 in 2003 and Cassation Court, III Civil Section, Sentence no. 13611, 21 June 2011.

⁴⁵ L'Aquila High Court, Sentence no. 2/2012, 25 May 2012, <[http://ec.europa.eu/anti-trafficking/Legislation+and+Case+Law/Case+Law/Sahel+case](http://ec.europa.eu/anti-trafficking/Legislation+and+Case+Law/Case+Law/Sahel+case;jsessionid=SNmdS0fJYLvTTW23QhLbLqj1YNmNySHk24fwNLLtgzf7LdLRj4Jw!-1752337833)> (in Italian) and <<http://ec.europa.eu/anti-trafficking/Legislation+and+Case+Law/Case+Law/Sahel+case>> (unofficial translation in English), accessed 3 October 2013.

⁴⁶ OSCE, *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings* (forthcoming).

⁴⁷ OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Chap. IV, para. 4.11; OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007), para. 8 and 11; OSCE ODIHR *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008); OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

⁴⁸ For further details on the European Action for Compensation for Trafficked Persons (COMP.ACT Europe), see: <<http://www.compactproject.org/>>, accessed 3 July 2013.

⁴⁹ European Union (EU), *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals* (18 June 2009), in Official Journal L 168/24, 30.6.2009, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>>, accessed 12 December 2013.

encourages civil society actors (e.g., NGOs, trade unions, and *Patronati*) to further explore voluntary agreements that could be reached through the mediation of a third party (e.g., a trade union in a collective action or a *Patronato*), and have thus a greater chance of being correctly implemented by employers.

18. Trafficking for domestic servitude is an issue that the Special Representative has highlighted over the last years.⁵⁰ The Special Representative notes with appreciation Italy's ratification of the ILO Convention on domestic work⁵¹ and the attention paid to this issue, also by trade unions.⁵² She also notes that a significant percentage of migrant workers regularized in the 2012 amnesty related to the transposition of the EU directive 2009/52/EC, are domestic workers⁵³. She therefore recommends to monitor domestic and care work as sectors that might be prone to abuse and exploitative practices, particularly when undocumented migrant workers are concerned. She also encourages the Italian authorities to pay special attention to trafficking for domestic servitude in diplomatic households and recommends, as a good practice already introduced in other OSCE participating States, that every employee be required to appear in person before the Protocol Department of the Ministry of Foreign Affairs to receive information about his or her rights. Protocol Services should also require a proof of payment of salary from the employer. The Special Representative is ready to offer technical assistance to facilitate contacts with NGOs and Ministries of Foreign Affairs in the OSCE region who have established good practices in this field. Finally, the Special Representative encourages the Italian authorities to take steps to increase access to justice of victims of domestic servitude in diplomatic households by, as a minimum, enabling victims to access compensation, including through mediation or State funds, also in cases where the perpetrators enjoy full diplomatic immunity.

19. Co-ordination among different stakeholders – both governmental and non-governmental – is a key factor to increase effectiveness of anti-trafficking measures. The Special Representative notes that regular consultations with civil society actors are critical to identify the ever-changing features of the trafficking phenomenon and address shortcomings in the existing assistance and protection system. She also notes that the co-ordination mechanism established with the primary task to select and co-fund assistance projects for victims of trafficking, the “Inter-ministerial Commission to support victims of trafficking, violence and

⁵⁰ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Trafficking in Human Beings for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

⁵¹ List of ILO Conventions ratified by Italy: <<http://www.ilo.org/rome/ilo-italia/convenzioni-ratificate/lang--it/index.htm>>, accessed 13 December 2013.

⁵² ACLI Colf, the Association of Christian Workers, organized a conference in November 2011 on domestic servitude and carried out a study: Sergio Pasquinelli and Giselda Rusmini *Badare non basta. Il lavoro di cura: attori, progetti, politiche* (ACLI Colf, 2013), <http://www.acli.it/index.php?option=com_k2&view=item&id=7840:badare-non-basta-il-lavoro-di-cura-attori-progetti-politiche&Itemid=119>, accessed 8 October 2013.

⁵³ According to the data of the Ministry of Interior, out of a total of 134,576 requests received, 115,969 relate to domestic workers: <http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/24/2012_10_17_Emersione_2012_-_Report_conclusivo.pdf>, accessed 8 October 2013 (in Italian).

severe exploitation”⁵⁴ should be re-launched and complemented by a stable co-ordination mechanism with civil society actors and local authorities.

20. National Action Plans have proved to be a good practice and an effective tool for policy guidance across the OSCE region. The Special Representative encourages the Italian authorities to bring forward the development of a National Action Plan (NAP) in co-ordination with relevant civil society actors, and to launch it as soon as possible. In this respect, the Special Representative is ready to offer technical assistance in the drafting process.⁵⁵

21. The Special Representatives underlines that restrictive migration policies – and in particular policies criminalizing irregular entry and residence in the country – have detrimental consequences on migrants, exacerbating their vulnerability to abuse and exploitation.⁵⁶ Especially victims who are undocumented migrants are prevented from breaking the silence because of fear of detention and/or deportation.⁵⁷ The Special Representative therefore urges the Italian authorities to abolish the crime of illegal entry/stay.⁵⁸

22. The Special Representative encourages the Italian authorities to pay further attention to the prevention of human trafficking. In this regard, she highlights that the enhancement of viable and accessible labour migration channels for both high

⁵⁴ The Inter-ministerial Commission for the support of victims of trafficking, violence and severe exploitation, Presidential Decree no.102 del 2007, is composed by representatives of the following institutions: Ministry of Justice, Ministry of Interior, Ministry of Labour and Social Policies, Department for Family Policies, the State-Regions’ Unified Conference and the National Association of Municipalities (ANCI), <<http://www.pariopportunita.gov.it/index.php/organismi-collegiali/commissione-per-il-sostegno-alle-vittime-di-tratta-violenza-e-grave-sfruttamento>> (in Italian), accessed 13 December 2013.

⁵⁵ On 5 December 2013 the Department for Equal Opportunities announced that the NAP will be adopted in the coming months. See: <<http://www.pariopportunita.gov.it/index.php/primo-piano/2421-lotta-contro-la-tratta-degli-esseri-umani>> (in Italian).

⁵⁶ The need to revise the criminalization approach to irregular entry and residence has been endorsed also by the European Court of Human Rights, which stated that a Member State’s legislation is precluded from providing for imprisonment on the sole ground that a third-country national remains in the State contrary to an order to leave. See ECHR, *Case of Siliadin v. France*, Application No. 73316/01 (26 July 2005); ECHR, *Case of Rantsev v. Cyprus and Russia*, Application No. 25965/04 (7 January 2010).

⁵⁷ See also PICUM, Platform for International Co-operation on Undocumented Migrants, <<http://www.picum.org>>, accessed 3 October 2013.

⁵⁸ OSCE Ministerial Council, Decision No. 1 *Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings* (Vienna, November 2000); OSCE Ministerial Council, *Decision No. 6, MC(9).DEC/6* (Bucharest, 4 December 2001); OSCE Permanent Council, *Decision No. 426 Trafficking in Human Beings* (July 2001); OSCE Ministerial Council, *Declaration on Trafficking in Human Beings* (Porto, December 2002); OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006); OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007); OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 5 December 2008); OSCE Ministerial Council, *Ministerial Declaration on Combating All Forms of Human Trafficking*, MC.DOC/1/11/Corr.1 (Vilnius, 2011); OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

and low-skilled workers is a critical factor.⁵⁹ She also encourages the promotion of anti-discrimination measures to foster prevention of human trafficking and exploitation of marginalized and stigmatized groups, such as undocumented migrants and ethnic minorities, especially Roma and Sinti.⁶⁰

23. The Special Representative urges the Italian authorities to transpose the EU directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.⁶¹ The Special Representative highlights - *inter alia* - the importance of the non-punishment clause envisaged in art. 8 of the directive. In view of the transposition of this provision, the Special Representative invites the Italian Ministry of Justice to consider the recommendations contained in the OSR/CTHB paper *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*⁶². The Special Representative also highlights the need to reinforce measures to prevent secondary victimization in criminal proceedings, of both minor and adult victims, in line with art. 12 of the EU Directive 2011/36/EU⁶³.

⁵⁹ See *inter alia*: Clemens, Michael A. "Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?" (2011), *Journal of Economic Perspectives*, 25(3), pp. 83-106, <<http://www.aeaweb.org/articles.php?doi=10.1257/jep.25.3.83>>, accessed 8 October 2013; ILO Director-General Guy Ryder's address at the conference of the European Commission on EU labour law, 21 October 2013, <http://www.ilo.org/brussels/information-resources/video/WCMS_226475/lang--en/index.htm>, accessed 12 December 2013.

⁶⁰ On the link between exploitation, human trafficking and discrimination see: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Combating Trafficking as Modern-Day Slavery: A Matter of Non-Discrimination and Empowerment. 2012 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, 2012); OSCE Ministerial Council, *Decision No. 8/09 Enhancing OSCE efforts to ensure Roma and Sinti sustainable integration* (Athens, 2009); OSCE Ministerial Council, *Decision No. 6/08 Enhancing OSCE efforts to implement the action plan on improving the situation of Roma and Sinti within the OSCE area* (Helsinki, 2008); OSCE Ministerial Council, *Decision No. 10/07 Tolerance and non-discrimination: promoting mutual respect and understanding* (Madrid, 2007).

⁶¹ European Union (EU), *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in Official Journal L 101, 15/04/2011, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>>, accessed 3 October 2013. The full transposition of the EU directive was due by April 2012 and an infraction proceeding was opened against Italy by the EU. A legislative decree was presented on 3 December 2013 and, at the time of this report, was pending the opinion from the Permanent Conference for the relations between State, regions and the autonomous Provinces of Trento and of Bolzano as well as the competent Commissions at the Chamber of Deputies and at the Senate. For the text of the legislative decree, see:

<http://www.giustizia.it/giustizia/it/mg_1_2_1.wp?facetNode_1=0_8&previousPage=mg_1_2&contentId=SAN972504> (in Italian). For the text of the explanatory report supplementing the draft law, see:

<http://www.giustizia.it/giustizia/it/mg_1_2_1.wp?previousPage=mg_1_2_1&contentId=SAN972512> (in Italian). The Special Representative wishes that the observations and recommendations contained in this report be duly considered in the transposition of the EU directive in the national legislation.

⁶² OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (Vienna, 2013).

⁶³ Art. 12 of EU Directive 2011/36/EU invites Member States to prevent secondary victimization and avoid that in the course of criminal proceedings, victims of trafficking are subjected to unnecessary repetition of hearings, to make eye contact with the offenders and to give testimony

24. The Special Representative considers monitoring and evaluation of anti-trafficking measures and policies an essential tool to improve effectiveness and cost-efficiency in order to adapt operational strategies to the ever-changing nature of the trafficking phenomenon. She praises the availability of data from different sources, such as the Department of Equal Opportunities, Ministry of Interior, Ministry of Labour and Social Policies, Anti-mafia National Directorate, and specialized units of the law enforcement agencies. She also notes that a unified system and compatible criteria for data collection, elaboration and reporting are critical for the development and review of anti-trafficking policies and measures. She therefore urges the Italian authorities to establish an independent National Rapporteur tasked with analysis, monitoring, evaluation and reporting.⁶⁴ The National Rapporteur should be provided with adequate funds to undertake its activities and should report to the Government and the Parliament.⁶⁵

25. In conclusion, the Special Representative encourages the Italian authorities to re-launch their forward-looking approach in the field of combating human trafficking and renew their efforts to implement the most innovative aspects of Italian legislation and policy, such as the unconditional protection and long-term social inclusion mechanisms. She urges the Italian Government to promptly secure funding for assistance and protection measures to prevent the shut-down of assistance measures for victims and suggests considering putting in place multi-year funding that allows relevant stakeholders to adequately plan and implement such measures. She invites both governmental and non-governmental actors to renew their efforts to enhance access to compensation for trafficked and exploited persons. She encourages the Italian authorities to improve internal co-ordination as well as policy coherence, and to establish a National Rapporteur, in view of enhancing effectiveness of operational strategies and cost-efficiency in responding suitably to the ever-changing features of human trafficking. She also urges the Italian authorities to revise national provisions on the criminalization of the irregular entry and residence in the country as a critical measure to prevent victimization of undocumented migrants. The Special Representative believes that identifying the fight against human trafficking as one of the priorities for the Italian EU Presidency in the second half of 2014 would represent an excellent opportunity to re-launch political attention on the topic, at the national and European level.

in public court hearings.

⁶⁴ OSCE Ministerial Council, Decision No.14/06 *Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 2006); European Union (EU), *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in Official Journal L 101, 15/04/2011, art. 19.

⁶⁵ OSCE 6th *Alliance Against Trafficking in Persons* Conference, OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Efforts to Combat THB in the OSCE Area: Co-ordination and Reporting Mechanism* (Vienna, 2008), <<http://www.osce.org/cthb/36159>>, accessed 3 October 2013; *Alliance Statement on National Rapporteur or Equivalent Mechanism*, 16 October 2008, <<http://www.osce.org/cthb/34440>>, accessed 3 October 2013.

26. The Special Representative invites the Italian authorities to consider the following recommendations based on the OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human Beings and its Addendum.⁶⁶ The Special Representative and her Office stand ready to provide technical assistance, if requested, by national and local authorities as well as civil society, and welcome further dialogue and co-operation to promote the appropriate follow-up to these recommendations.

Recommendations

The Italian authorities are encouraged to take into consideration the following recommendations:

1. Enhance policy coherence and co-ordination through:

- Ensuring that a unified State fund for victim assistance is available and adequately funded, preferably on a multi-year basis, also through confiscated assets and proceeds, in line with the art. 12 law no. 228/03;
- Ensuring the approval of a National Action Plan;
- Establishing a regular consultation mechanism with State and non-State actors at the national level, including local authorities;
- Ensuring a full and consistent enforcement of art. 18 law no. 286/1998, particularly with reference to the protection of presumed victims irrespective of their co-operation with law enforcement and judicial authorities (so called social path);
- Abolishing the criminalization of irregular entry and irregular stay of migrants as a critical measure to reduce vulnerability of undocumented migrants to mistreatment, exploitation and trafficking;
- Ensuring transposition of EU Directive 2011/36/EU, with a special consideration for art. 8 envisaging the non-punishment principle for victims of trafficking;
- Establishing an independent National Rapporteur to ensure data collection and analysis, monitoring and evaluation of anti-trafficking measures, and reporting to the Government and the Parliament on annual basis.

2. Improve identification of victims, assistance and protection of their rights:

- Improving administrative procedures in order to avoid unnecessary delay in accessing basic rights, and in particular the procedures to issue residence permits;
- Enhancing co-operation between specialized NGOs/welfare services and criminal justice actors concerning identification of presumed victims;

⁶⁶ OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); OSCE Permanent Council, *Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later* (Vienna, 6 December 2013).

- Ensuring greater co-operation between the anti-trafficking mechanisms and other protection schemes for vulnerable persons on the move – i.e., asylum seekers, refugees, and unaccompanied and separated children;
- Improving capacity building and training opportunities involving State and non-State actors active in the field of assistance and integration of victims of trafficking;
- Improving the scope, the availability and the accessibility of assistance services in order to address the specific needs of women, men and children.

3. Enhance identification of child victims of trafficking and protection of their rights:

- Enhancing co-ordination with relevant national and local institutions responsible for the assistance and protection of foreign unaccompanied and separated children to address children’s multiple vulnerabilities and the special needs of child victims of trafficking;
- Ensuring that the principle of non-punishment for child victims forced into illicit activities is fully and consistently enforced;
- Ensuring that child victims of trafficking have access to compensation, including through a State Fund.

4. Enhance referrals of victims, through:

- Establishing a National Referral Mechanism (NRM) in co-ordination with civil society actors and local authorities;
- Developing memoranda of understanding/co-operation agreements for the identification and assistance of victims of trafficking at local level, involving State authorities, such as prosecutors’ offices, law enforcement agencies and immigration authorities; victim support organizations such as welfare services, specialized associations/NGOs, women’s rights organizations, public health services; civil society actors such as trade unions, *Patronati*, migrants’ rights organizations, diaspora, etc.;
- Ensuring that labour inspectors, trade unions and *Patronati* are members of the National Referral Mechanism and actively involved in referring presumed and actual victims to appropriate service providers;
- Enhancing *ad hoc* outreach to vulnerable groups and enable them to access to information about their rights in the context of the National Referral Mechanism;
- Ensuring NGOs’ regular access to migrant reception facilities, including reception centres for undocumented migrants (CIE).

5. Enhance the accountability of offenders, including through a more effective justice system response, by:

- Providing systematic training to all members of the Judiciary on new features of human trafficking, and on applicable provisions in different areas of law;
- Generalizing financial investigations in trafficking cases (for all forms of exploitation) to ensure seizure, freezing and confiscation of the proceeds of

crime. The use of such confiscated proceeds for victim assistance should also be promoted;

- Ensuring the transposition of the EU Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA).

6. Strengthen victims' access to justice and effective remedies, including compensation, through:

- Analysing and addressing the main obstacles preventing trafficked persons from accessing justice and effective remedies, with a special focus on victims with irregular immigration status or exploited in illegal activities;
- Improving rights information and effective access to remedies and compensation through the provision of early and qualified legal counselling to trafficked persons;
- Establishing a State fund to guarantee fair compensation of damages suffered by victims of trafficking
- Analysing the impact of return procedures on victims' access to justice and remedies including compensation, and to this end promoting bilateral agreements with countries of origin.

7. Enhance responses to prevent and address trafficking for labour exploitation by:

- Ensuring systematic labour inspections especially in sectors prone to labour exploitation, i.e., agriculture, textile, commercial fishery, construction, tourism industry;
- Enhancing the role of trade unions and *Patronati*, particularly in the field of outreach to potential trafficked and exploited workers, as well as in the field of non-litigation tools to access remedies in cases of labour exploitation;
- Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not hamper access to assistance and support to victims; regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps and inform them in person about their rights;
- Considering ways to allow migrant domestic workers in diplomatic households to change their employer in order to reduce their dependency on the original employer, at least in cases of abuse and exploitation.

ANNEX I

RESPONSE TO THE OSCE REPORT ON HUMAN TRAFFICKING (received 10 July 2014)

The Italian authorities are pleased to give updated information about the following recommendations, as formulated by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, due to her visit to Italy from 17-18 June and 15-19 July 2013:

1. ENHANCE POLICY COHERENCE AND CO-ORDINATION THROUGH:

- Ensuring that a unified State fund for victim assistance is available and adequately funded, preferably on a multi-year basis, also through confiscated assets and proceeds, in line with the art. 12 law no. 228/03;
- Ensuring the approval of a National Action Plan;
- Establishing a regular consultation mechanism with State and non-State actors at the national level, including local authorities;

In 2013 the Department for Equal Opportunities at the Presidency of the Council of Ministers – in cooperation with all the national authorities committed to this issue and all other relevant public and private actors – started working on the development of a National Action Plan against Trafficking in Human Beings. Through an effective coordination among the Ministries, NGOs and associations involved, the Plan will be aimed at enhancing the governance of all national measures against trafficking and defining the effective cooperation among all national stakeholders involved in the protection of trafficked people and in the fight against trafficking. In particular, the Plan will focus on prevention, assistance and protection of victims, judicial cooperation, identification of potential victims, and adaptation of national legislation. It will also provide for the establishment of a national referral mechanism for trafficked persons, including minimum protection standards and standard operating procedures for the referral of victims to the proper service providers. In addition, it will include guidelines on how to design and implement a sustainable system aiming to both prosecute traffickers and provide support to victims, while defining suggested roles for governmental institutions and the civil society.

- Ensuring a full and consistent enforcement of art. 18 law no. 286/1998, particularly with reference to the protection of presumed victims irrespective of their co-operation with law enforcement and judicial authorities (so called social path);
- Abolishing the criminalization of irregular entry and irregular stay of migrants as a critical measure to reduce vulnerability of undocumented migrants to mistreatment, exploitation and trafficking;

The Italian Supreme Court has sentenced in 2010 about the aggravating circumstances regarding the irregular status of migrants in committing crime to be considered against the Basic Law (case No. 249/2010).

Moreover, the Parliament approved, on 8th April 2014, Law no. 67 of 28

April 2014, which aims at decriminalizing the conduct of irregular entry and stay on the Italian territory.

Pursuant to article 2, paragraph 3, subparagraph b), within eighteen months of the entry into force of the law the Government shall “repeal, transforming it into an administrative violation, the offence provided for by article 10-bis of the Consolidation Act governing immigration and laying down provisions on the status of foreigners, provided for by Legislative Decree no. 286 of 25 July 1998, maintaining the criminal aspect of conducts violating the administrative measures adopted on this matter.”

Consequently, the first irregular entry will be decriminalized, whereas only the conducts of those who do not comply with an order to leave the country, who re-enter after a deportation or violate other provisions against irregular immigrants (such as the obligation to register at the Police Headquarters or the surrender of the passport) will continue to be punished as offences.

- Ensuring transposition of EU Directive 2011/36/EU, with a special consideration for art. 8 envisaging the non-punishment principle for victims of trafficking;

The European Directive 2011/36/EU against trafficking of human beings was recently transposed into the Italian legislative framework by Legislative Decree No. 24/2014, so far amending Articles 600 and 601 of the Italian Penal Code in order to introduce a more precise definition of crimes consisting of placing or holding a person in a state of enslavement and of trafficking. At the same time the coordination between the institutions competent on protection and assistance for the trafficking victims and the institutions competent on asylum has been reinforced, as well as the obligation to inform not accompanied minors, trafficking victims, of the possibility to ask for international protection.

Moreover, with regard to the irrelevance of the consent of a victim to the intended exploitation, article 50 of the Criminal Code provides that an individual is not punishable if he has acted with the consent of a person who could validly dispose of the right infringed or endangered. The consent, therefore, can exempt an illicit conduct from liability only in connection with an individual’s available rights (estate related rights) and not in connection with unavailable rights such as the very personal rights (life, physical integrity, personal liberty, sexual liberty, honor, dignity, personal identity). It follows that, the possible consent given by the victim of trafficking has no legal relevance.

- Establishing an independent National Rapporteur to ensure data collection and analysis, monitoring and evaluation of anti-trafficking measures, and reporting to the Government and the Parliament on annual basis.

2. IMPROVE IDENTIFICATION OF VICTIMS, ASSISTANCE AND PROTECTION OF THEIR RIGHTS:

- Improving administrative procedures in order to avoid unnecessary delay in accessing basic rights, and in particular the procedures to issue residence permits;

- Enhancing co-operation between specialized NGOs/welfare services and criminal justice actors concerning identification of presumed victims;
- Ensuring greater co-operation between the anti-trafficking mechanisms and other protection schemes for vulnerable persons on the move – i.e., asylum seekers, refugees, and unaccompanied and separated children;

Consolidated provisions regulating immigration have been progressively supplemented by Decree of the President of the Republic No. 394/99 and subsequent amendments: Article 18 of Legislative Decree No. 286/1998 establishes that the person victim of violence or serious exploitation, or whose safety is put at risk, has the right to receive special protection through a social assistance and integration programme, as well as to be granted a special residence permit on humanitarian grounds.

So far Article 18 focuses on a victim centred approach, granting for programs of long-term assistance and social inclusion for victims of trafficking. Article 18 provides for a six months renewable temporary social protection stay permit to identified victims which can be renewed for one year and converted into a long-term work or student residence permit. The legislation in force offers two paths through which the residence permit may be granted. The first one is the judicial avenue, contingent on the victims' cooperation with the public prosecutor's investigation. In this context the issuance of a stay permit is at the discretion of the public prosecutor. The second option consists of a social procedure involving local authorities and civil society organization.

- Improving capacity building and training opportunities involving State and non-State actors active in the field of assistance and integration of victims of trafficking;
- Improving the scope, the availability and the accessibility of assistance services in order to address the specific needs of women, men and children.

3. ENHANCE IDENTIFICATION OF CHILD VICTIMS OF TRAFFICKING AND PROTECTION OF THEIR RIGHTS:

- Enhancing co-ordination with relevant national and local institutions responsible for the assistance and protection of foreign unaccompanied and separated children to address children's multiple vulnerabilities and the special needs of child victims of trafficking;
- Ensuring that child victims of trafficking have access to compensation, including through a State Fund.

Article 19 of the Consolidated Law on Immigration states the principle of non-refoulement of foreign children: according to this provision, with the exception of particular situations justified by reasons of public order and State security, it is forbidden the deportation of a foreigner under the age of 18. Consequently, UAMs are entitled to obtain a residence permit (on the ground of "minority age"), valid until the age of 18.

The application of the non-refoulement principle to UAMs has a motivated legal ground: the Convention on the Rights of the Child (CRC), as ratified and implemented by Italy through Law No. 176/1991. According to this

Convention, the best interest of the child is a priority in the action of the Public Administration.

Moreover, in accordance with the CRC obligations, in Italy UAMs are guaranteed with a wide set of protections: right to education, to healthcare, accommodation in a safe place, right to guardianship. Thus, during the minority age, UAMs are housed in reception centres for minors or by families in foster care. Peculiar reception measures are developed for UAMs who deserve additional protection in consideration of their vulnerabilities (asylum seekers, refugees, victims of trafficking).

A specific National Fund is established in order to guarantee the reception of unaccompanied migrant minors, with an endowment of 40 million Euros for 2014).

According to legislative framework in force, the Italian Ministry of Labour and Social Policies is the central administrative authority in charge for the census of UAMs present in Italy. Therefore, a ministerial database collects all the information concerning UAMs, on the basis of reports received by the national bodies that work in the field of the identification and reception of minors. A national report, containing aggregated and anonymous data, is periodically published on the institutional website.

In order to strength the activity of data collection, facilitating communication and interaction among all involved institutions, an on-line information system, aimed to the traceability of the reception pathway of UAMs since they enter the Italian territory, is currently under development. This system will allow all the involved parties (Police Headquarters, Regions, Municipalities, Communities, Tribunals, etc.) to access a shared database where each one, according to its competences, may enter, read and update the information on minors. The implementation of the system will strength the cooperation among actors, in order to improve the reception and integration pathways of minors. The System is currently being tested in seven geographical areas, characterised by a peculiar system of tracing, protection and care: Ancona, Bari, Bologna, Crotone, Syracuse, Turin and Venice.

- Ensuring that the principle of non-punishment for child victims forced into illicit activities is fully and consistently enforced;

4. ENHANCE REFERRALS OF VICTIMS, THROUGH:

- Establishing a National Referral Mechanism (NRM) in co-ordination with civil society actors and local authorities;
- Developing memoranda of understanding/co-operation agreements for the identification and assistance of victims of trafficking at local level, involving State authorities, such as prosecutors' offices, law enforcement agencies and immigration authorities; victim support organizations such as welfare services, specialized associations/NGOs, women's rights organizations, public health services; civil society actors such as trade unions, *Patronati*, migrants' rights organizations, diaspora, etc.;
- Ensuring that labour inspectors, trade unions and *Patronati* are members of the National Referral Mechanism and actively involved in referring presumed and actual victims to appropriate service providers;

- Enhancing *ad hoc* outreach to vulnerable groups and enable them to access to information about their rights in the context of the National Referral Mechanism;
- Ensuring NGOs' regular access to migrant reception facilities, including reception centres for undocumented migrants (CIE).

Launched in 2006, Praesidium, which operates in all the Reception Centers for migrants, has proved to be an effective operational model, enabling the provision of information to those who arrived and the identification of appropriate channels for their reception and access to appropriate legal and administrative procedures. Services provided are: (a) legal counselling for migrants; (b) information with regard to the Italian legislation in force in the field of irregular migration, trafficking of human beings and enslavement, as well as information over regular entry procedures in Italy and the submission of the application for international protection; (c) information over the opportunities for voluntary or assisted return; (d) carrying out and distribution of information material regarding the specific institutional responsibilities of each Organization; (e) identification of the vulnerable groups and subsequent reporting to the competent authorities; (f) monitoring of reception procedures both at the landing spots and at destination Centers, with particular attention to respect for human rights.

Activities are conducted by teams of mediators and field-officers, in order to promptly respond to the many material and social needs of migrants.

In the Praesidium VIII framework, since 2013, the partnership among all the above mentioned involved entities has been reinforced through the adoption of ad hoc Addendums to each bilateral agreement, aimed at establishing a Commission within each Center whose mandate is to support the Prefect in implementing its institutional action to monitor and ensure the respect of migrants' assistance standards.

Each Commission is composed of a Prefect, a representative of the Police Forces (Questura) and a representative for each entity working within the Praesidium framework (UNHCR, IOM, IRC, Save the Children); two monitoring cycles were carried out in 2013.

5. ENHANCE THE ACCOUNTABILITY OF OFFENDERS, INCLUDING THROUGH A MORE EFFECTIVE JUSTICE SYSTEM RESPONSE, BY:

- Providing systematic training to all members of the Judiciary on new features of human trafficking, and on applicable provisions in different areas of law;

Law no. 150 of 25 July 2005, established the Superior School of the Judiciary as an autonomous public entity, responsible for the initial training and professional updating of career judges and prosecutors. The School has the task of ensuring the professional training of the members of Judiciary and performs didactic and research duties; among them, the lifelong training of judges and prosecutors and, in cooperation with the Superior Council of Judiciary (SCJ), the initial training of trainee judges and prosecutors; the training of those in leading positions in courts; and that of noncareer judges and prosecutors. The School is also in charge of training activities at

European and international level; it cooperates in the training of other judicial operators and publishes studies and researches. The bodies of the School are: a steering committee composed of twelve members chosen by the SCJ and the Ministry from among judges and prosecutors, university professors and lawyers (settled on 24 November 2011). The School organizes on a regular basis courses of professional updating for judges and prosecutors who come into contact with the victims of trafficking (i.g. in the 2014 training program it is provided a course on the rights of asylum seekers and immigrants).

- Generalizing financial investigations in trafficking cases (for all forms of exploitation) to ensure seizure, freezing and confiscation of the proceeds of crime. The use of such confiscated proceeds for victim assistance should also be promoted;
- Ensuring the transposition of the EU Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA).

At present, Italian Government is preparing the request to the Parliament of delegation for transposition of the EU Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA).

6. STRENGTHEN VICTIMS' ACCESS TO JUSTICE AND EFFECTIVE REMEDIES, INCLUDING COMPENSATION, THROUGH:

- Analysing and addressing the main obstacles preventing trafficked persons from accessing justice and effective remedies, with a special focus on victims with irregular immigration status or exploited in illegal activities;
- Improving rights information and effective access to remedies and compensation through the provision of early and qualified legal counseling to trafficked persons;
- Establishing a State fund to guarantee fair compensation of damages suffered by victims of trafficking
- Analysing the impact of return procedures on victims' access to justice and remedies including compensation, and to this end promoting bilateral agreements with countries of origin.

7. ENHANCE RESPONSES TO PREVENT AND ADDRESS TRAFFICKING FOR LABOUR EXPLOITATION BY:

- Ensuring systematic labour inspections especially in sectors prone to labour exploitation, i.e., agriculture, textile, commercial fishery, construction, tourism industry;
- Enhancing the role of trade unions and *Patronati*, particularly in the field of outreach to potential trafficked and exploited workers, as well as in the field of non-litigation tools to access remedies in cases of labour exploitation;
- Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not

hamper access to assistance and support to victims; regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps and inform them in person about their rights;

- Considering ways to allow migrant domestic workers in diplomatic households to change their employer in order to reduce their dependency on the original employer, at least in cases of abuse and exploitation.

ANNEX II

Bodies and organizations met during the visits:

- **Presidency:** Mr. Carlo Guelfi, Chief of the President's Secretariat, Mr. Antonio Zanardi Landi, Ambassador, diplomatic counsellor of the President.

- **Chamber of Deputies:** Ms. Laura Boldrini, President of the Chamber of Deputies, Ms. Mirella Cassarino, Head of the International Relations Department and Ms. Giulia Laganà International Relations Officer, Office of the Speaker, Ms. Donatella Ferranti, President of the Justice Commission.

- **Ministry for Foreign Affairs:** Ms. Emma Bonino, Minister of Foreign Affairs, Mr. Piero Benassi, Head of Minister's Cabinet.

- **Ministry for Equal Opportunities, Sport and Youth Policies:** Ms. Josefa Idem, Minister.

- **Ministry of Labour and Social Policies:** Mr. Enrico Giovannini, Minister, Ms. Cecilia Guerra, Vice Minister.

- **Ministry of Justice:** Mr. Renato Finocchi Ghersi, Chief of Cabinet.

- **Ministry for Integration:** Ms. Cécile Kyenge, Minister.

- **Ministry of Interior:** Ms. Angela Prià, Prefect, Head of the Department for Internal and Territorial Affairs, Ms. Camelita Ammendola, Director of the Office for External and international Relations, Department of Civil Liberties and Immigration

- **Senate:** Mr. Pietro Grasso, President of the Senate, Ms. Anna Finocchiaro, Senator, President of Constitutional Affairs.

- **Holy See:** S.E. Mons. Mamberti, Secretary for the Relations with States.

- **Cabinet of the Mayor of Rome:** Mr. Enzo Foschi, Head of Cabinet.

- **Local authorities** (Province of Arezzo, of Genoa, of Venice, and of Rome)

- **Acting National Antimafia Prosecutor:** Mr. Giusto Sciacchitano, Counsellor.

- **Antimafia District Prosecutor's Offices and law enforcement agencies:** Ministry of Interior: Immigration and Border Police, Central Operational Service (SCO) and Central Anti-Crime Directorate; Ministry of Defence: Carabinieri Police Corps, Specialised Organized Crime unit (ROS); Ministry of Labour and Social Policies: Carabinieri Police Corps, NIL (Labour Inspectorate); Ministry of Economy and Finance: Financial Police, in co-operation with Inter-Forces Coordination Office at MoI.

- **International organizations:** IOM, UNHCR.

- The Special Representative also visited a **detention centre** for irregular, undocumented migrants - CIE Ponte Galeria

- The Special Representative hosted a **roundtable with Civil Society** representatives as well as a **Panel discussion at the Chamber of Deputies** organized and opened by Ms. Laura Boldrini, President of the Chamber.

- She also participated in a **restricted hearing** with the Committee for Equal Opportunities and Security at the Senate's Commission for Constitutional Affairs.