

**SUPPLEMENTARY REPORT
ON THE IMPLEMENTATION OF THE OPTIONAL
PROTOCOLS ON THE CRC IN ITALY**

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Gruppo di Lavoro
per la Convenzione
sui Diritti dell'Infanzia
e dell'Adolescenza



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Introduction

The Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza (Working Group on CRC) was established in 2000 with the aim of drawing up a supplementary report to the one presented by the Italian Government on the situation of children in Italy and submit it to the UN Committee on the Rights of the Child.

The Supplementary Report "The Rights of Childhood and Adolescence in Italy - the third sector perspective", signed by 42 Italian non-governmental organizations and associations, was presented in Rome in November 2001 and sent to the UN Committee. Thus, a Working Group's delegation took part in the pre-session meeting with the UN Committee (Geneva, October 2002) and in the session that took place on 16th January 2003.

As it presented the Supplementary Report, the Working Group also undertook to continue to monitor the implementation of CRC and the Concluding Observations, not only awaiting the 2008 meeting with the UN Committee, but also in order to guarantee an independent monitoring system resulting from the cooperation of all the NGOs that work in favour of children's rights.

*Therefore the Working Group decided to prepare a annual **Follow-up Report** on the implementation of the Rights of the child and the UN Committee's Recommendations to Italy. The Report will focus on specific issues that will be selected as they will be considered to be particularly important in that specific point in time. Thus, the Follow up Report is the major instrument for the Group's monitoring action. However this report is not supposed to be merely a way to report on the system's main deficiencies, but rather it should be regarded as an opportunity to start a constant and fruitful exchange of opinions with all the Institutions that are responsible for the policies in favour of childhood and adolescence in Italy.*

The first Follow up Report was published on 27th of May 2005 on the anniversary of the Italian ratification of the CRC.

As the Italian government drew up and sent to Geneva a report on the implementation of the Optional Protocols and considering for the UN Committee to examine it, the Working Group chose to include the information concerning the implementation of the Ops in two chapters of the 2005 follow up Report.

The information presented in this report is the English translation of the aforementioned chapters.

Chapter 1

Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified by Italy and transposed through Act 46/2002.

Based on art. 12 of the Protocol, within two years following the entry into force of the Protocol itself State Parties' Governments must submit a report to the UN Committee providing comprehensive information on the actions taken to implement the Protocol's provisions. The information on the implementation of the Protocol will then be included into the Government's report on the CRC implementation that must be submitted to the UN Committee every five years.

In May 2004, the Interministerial Committee on Human Rights, (Comitato Interministeriale dei Diritti Umani) which operates within the Ministry of Foreign Affairs, submitted its first report. The Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza (Working Group on the CRC) is willing to contribute to the monitoring procedures, especially in reference to some specific issues raised in the government report.

RELEVANT LEGISLATION

DDL 4599 (Government's Bill) presented in Parliament on 13.01.2004	Provisions on combating sexual exploitation of children and child pornography also on the internet.
Act 228/2003	Provisions against human trafficking
National Plan of Action on the protection of the rights and development of developmental age individuals 2002-2004	
Act 328/2000	Framework Law aimed at creating an integrated system of social services and activities
Legislative Decree 286/1998	Act on Immigration and Foreigners
Act 269/1998	Provisions against child prostitution, child pornography and child sex tourism as new forms of slavery
Act 285/1997	Provisions for the promotion of rights and opportunities for children and adolescents
Act 66/1996	Provisions against sexual offences
Act 49/1987	New provisions on Italy's cooperation with developing countries
Act 184/1983	Provision on children's right to have a family

I. Actions taken by the Italian Government during its semester of European Union presidency.

Thanks to the commitment of all the Departments involved in the organization of the political agenda for the semester of Italian presidency of the European Council (June-December 2003), a special priority was granted to children's rights. Indeed, a part from the usual Europe de l'enfance meeting that was held in September 2003 in the town of Lucca and attended by all the European Ministers responsible for childhood, other meeting were also organised. Another inter-ministerial meeting on children's rights was organised in collaboration with the French government and held in Paris on November, 20th 2003. Moreover the Forum on Human Rights was especially devoted to children's rights, while ChildONEurope,¹ whose creation and further development were largely supported by the

¹ The European Network of National Observatories on Childhood (ChildONEurope), based at the Florence Centro Nazionale di documentazione e analisi per l'infanzia e l'adolescenza (National Centre for Documentation and Analysis on Childhood and Adolescence) aims, among other things, at fostering exchange of information on legislation, policies, schemes, statistical data, research studies and best practices on childhood and adolescence. www.childoneurope.org.

Italian government, held a seminar on foreign non-accompanied children. Finally the adoption of European Guide Lines on children and armed conflict was a landmark achievement, as this is the first document approved at European level on this matter.

Nonetheless, it must be said that during the whole semester the debate focused more on the concept of “family”, rather than children, thus showing a conservative approach whereby children and adolescents are barely considered as individuals entitled to their own rights. Moreover the documents adopted lacked incisiveness. In reference to the aforementioned inter-ministerial meetings, the declaration of principles that resulted from the meeting held in Lucca was not given the appropriate publicity and no follow-up or monitoring mechanisms were developed. Whereas the Paris meeting ended without the approval of an official document.

We regret noticing that it has become common habit among EU presidencies to select a number of issues concerning policies for childhood and adolescence, without making efforts to guarantee consistency and continuity with the previous initiatives and failing to set up any system aimed at monitoring the work carried out as a result of the declarations or conclusions reached during these meetings. On the other hand, we firmly believe that these inter-ministerial meetings could yield much better results through specially tailored and well organised cooperation on the issues considered, but most of all by setting specific commitments and objectives to be met within a precise time schedule. Finally, it is noteworthy that Associations and NGOs’ participation to these meetings was hindered in many ways, due to lack of information available on the very existence of the meetings. Indeed the inter-ministerial calendar of meetings was made public only at the beginning of the semester and the procedures for Associations and NGOs’ participation were made known only too late, so that many had to contact European institutions to obtain these type of information.

The Working Group recommends to:

- **promote NGOs and Association participation and dissemination of information on inter-ministerial meetings on childhood as well as extensive publicity to any event on the political agenda that is dedicated to children;**
- **make further efforts to favour consistency and continuity of the issues tackled by EU presidencies, include children’s rights in final documents and promote inter-ministerial meetings on childhood.**

II. Sex Tourism

Sex tourism means travelling to a country of destination for the purpose of having sex, in exchange for money, especially with children.

This phenomenon usually involves nationals coming from rich countries who travel to poorer countries, where the relevant legislation is lacking or non-comprehensive and where the law is most of the time inappropriately enforced due to mere carelessness or to malpractice resulting from corruption. Italy, like many other industrialised countries, is one of the countries of origin of this phenomenon. Indeed there’s a large number of Italians travelling every year to the beaches of Varadero and L’Avana, Cuba, to Boca Chica in the Dominican Republic and to Fortaleza and Recife, Brazil² only for the purpose of having sex.

Available data on this subject show that this phenomenon is rapidly growing, also thanks to the widespread use of communication technologies; prospects for the future are even more daunting. In December 2004 a major police operation against sex tourism was carried out for the first time in Italy. As a result, four people were arrested and dozens of travel agencies all over the country were searched for having organised trips to Brazil with the only purpose of exploiting child prostitution.³

² Centro Nazionale di Documentazione e analisi per l’infanzia e l’adolescenza, “Uscire dal silenzio. Lo stato di attuazione della Legge 269/98” Florence. Istituto degli Innocenti, January 2003.

³ See, among other newspapers, La Repubblica 15.12.2004 “Four arrested: 2 women “recruiters” from Fortaleza and 2 Italian travel agents”. “The Act introduced in 1998 enforced for the first time”, “Raid against sex tourism”; Corriere della

Awareness of this phenomenon is not yet widespread and there are many problems in launching awareness raising campaigns, especially because they require long term investments⁴.

Act 269/1998 on sex tourism enshrines two fundamental principles:

1. any activity involving child sexual exploitation can be considered as a crime. Thus, not only those who force a person under the age of 18 into prostitution or those working in the sex tourism industry, but also those who want to have sexual intercourse with a child in exchange for money or other economic will be punishable, unless there is a more serious crime involved.
2. the principle of extraterritoriality, whereby Italian nationals can be prosecuted for these crimes whether they were committed in Italy or abroad.

Bill 4599 is currently being discussed by the Parliamentary Justice Commission in its legislative sitting. This bill includes not only the already existing possibility of charging the tour operator but also that of prosecuting a tourist accused of sex tourism⁵.

Under Art. 16 of Act 269/1998 up to 2001 tour operators were obliged to inform their customers that crimes related to child prostitution and child pornography could be punished even if they were committed abroad. In 2002, also as a result of efforts made by some Associations, a new bill (DDL 2669 April 18th 2002) was presented in Parliament in order to make this obligation a permanent one. This bill was then included in bill 4599, which is currently being discussed.

Although this bill is unanimously considered to be an example of best practice in this matter, so far only one person was convicted for child sex tourism in Italy.⁶

In 2000 a Code of Conduct (CC)⁷ for the protection of children from sexual exploitation in tourism was adopted by associations, trade unions, and companies from the tourist industry⁸.

The signatory parties pledged not only to respect the provisions established in Act 269/1998, but also to introduce effective measures aimed at combating child sexual exploitation in tourism in any possible manner and any useful occasion. They specially pledged to:

- inform Italian employees as well as the staff working in the destination countries, customers and suppliers about the problem of child sexual exploitation⁹
- include contracts' clauses with their foreign counterparts whereby they are required to control, as much as it is in their power, that no contacts with pimps or children with the aim of having sex occur during the tourist stay; demand that hotels do not allow local children access to hotel rooms in order to have sex; finally not to renew the contract in the event that such a serious breach is proven.
- Include the Code of Conduct in new work contracts.

Sera 15.12.2004 "Sex Tourism in Brazil: Travel Agencies investigated", "Network moving thousands of Italian tourists discovered: 4 arrests, "Children hired for a few euros".

⁴ In 1997 the first Italian ad made by ECPAT Italia and funded by the Tourist Board was broadcasted by the public network RAI for a period of 20 days only. In 2003 a new ad produced by ECPAT New Zealand and translated into Italian was aired by the private network Mediaset four times a day for three weeks while RAI did not choose to air it. Toys, the Terre des Hommes Germany-produced ad was shown by Lufthansa during long range flights; another ad, produced by ECPAT France and sponsored by Air France was shown by Air France and other international carriers, and the Italian version was broadcasted in national digital networks during high seasons.

⁵ Art. 4 of Bill 4599 "The following paragraph is added to Art. 600 quinquies of the criminal code. Anyone taking part in the trips referred to in paragraph one is punished with one to three years imprisonment and a fine of Euro 2,500 to 40,000"

⁶ Ruling n.15602, 26.10.2001. Rome Courthouse.

⁷ Promoted by ECPAT Italy

⁸ So far the signatory parties are the following: Astoi, Assotrasviaggi, Assoviaggi, Fiavet, Associazione VISIT USA Italia, Interline International Club, EBIT, CGIL, CISL, UIL, Adiconsum, Virgin Express Italia and just recently Ventura Travel, ACI and Piramide Net.

⁹ There are some encouraging examples such as Tour Operator "I Viaggi del Ventaglio", an Astoi associate, that organised two seminars held in the Dominican Republic and that were aimed at training its key hotel employees. Their suppliers, as well as members of the law enforcement agencies, politicians, academicians and members of the local communities were also invited. As a result a code of conduct was drawn up and adopted also by Dominican hotels and restaurants' national Associations. On the Government part, a warning was affixed in Santo Domingo Airport (next to the one against drug abuse) informing on the Dominican law against child and adolescents prostitution and sexual exploitation.

Associations working on this sector adopted this Code of Conduct and also agreed to support its dissemination among all their members. In 2004, the Code of Conduct was included in the tourist sector renewed National Collective Contract.

However there is still much to do. That's why in 2005 the Code of Conduct's signatory parties agreed to set up two Task Forces in order to set up a system to monitor the activities carried out by every signatory parties and to guarantee Travel Agencies' renewed efforts. Therefore, if the Code of Conduct is to be something more than just a list of good intentions, it is necessary to achieve a wider public awareness of this Code as well as an effective monitoring and evaluation system.

Finally, the tourist industry commitment in promoting awareness-raising campaigns, employees' training specifically aimed at combating this phenomenon, and tourists' better awareness of the problem are vital.

The Working Group recommendations are:

- **Government commitment to allocate funds to:**
 - **prepare long term national informational and awareness campaigns in airports, during long range flights and in national tv networks;**
 - **raise awareness among the younger generations through training schemes and actions aimed at those attending vocational courses for tourist training, as well as those working in this sector;**
 - **develop cooperation projects to give children at higher risk all the necessary opportunities to live a decent life;**
- **promotion and improvement of the application of the Code of Conduct through an effective monitoring and assessment system;**
- **more effective cooperation between States, especially through Interpol, which operates in order to identify those responsible for favouring child sex tourism, child pornography and child abuse through the internet.**

III. Child protection and the Media

- **Child protection and television**

For several years there has been a heated debate on the relation between children and television in Italy. As a result, a number of provisions were introduced. The relevant legislation include European directives as well as national laws and deontological codes such as the Self-Regulation Code on TV and Child protection that was adopted by all national and several local TV networks on 29th of November 2002.

In 2004 the issue of TV and child protection was tackled at legislative level and included in Act 112/2004 on the radio and television system, also known as the Gasparri Law. The issue is mainly, but not solely, tackled in Article 10 of the Act where the Self-Regulation Code on TV and Child protection and the Committee supervising on its application are clearly recognised.

Since Act 112/04 has entered into force: 1) all the networks must abide by the Code, regardless of the fact that they had previously signed it or not; 2) the Authority for communication (Autorità per le Garanzie nelle comunicazioni)-Agcom, has the power to act in order to have the Code respected even if its provisions are not included in statute law; 3) monetary penalties imposed by the Authority due to breaches concerning children are higher (Art.10 paragraph 6); 4) sanctions imposed by both the Authority for communication and the Committee must be made public also by the network that was punished, in the news editions that enjoy good ratings.

The **Supervising Committee on the application of the Code on TV and child protection (Comitato per l'applicazione del Codice TV e minori)**, was established in January 2003 and during

its first two years of activity has been working on two areas. On the one hand it has been evaluating every case reporting an alleged breach of the Code, on the other hand it has launched awareness-raising initiatives such as meetings with networks' executives as well as conferences on specific issues such as violence on TV or information on wars or the educational opportunities offered by "good quality television".

In 2004 the Committee has evaluated 512 reported cases (355 in 2003), 146 cases were investigated (90 in 2003) and a breach of the Code was proven in 53 cases (32 in 2003). Most of the problems are raised by films, commercials and entertainment shows. 39 "recommendations" were passed as well as 7 guideline documents on specific issues such as women in TV, reality TV and how information about abandonment of newborn children is conveyed. Finally, 48 erotic or porn shows usually aired during the night and on local TV stations were reported (11 in 2003) to the Authority for Communication Guarantees (Agcom). The Committee must inform the Authority about the results of investigated reports which must also be made public by the networks that are punished.

In 2003 there only seven announcements of this kind were made, while 35 announcements were aired in 2004. The Committee required a public announcement only for the most serious cases, while under article 19 paragraph 4 of Act 112/04 these announcements will be compulsory in every case. Although they are not always timely and often very brief, these announcements still show clearly that the Committee is working.

The Committee is also working very closely and fruitfully with the Agcom in order to develop a synergy that will allow them to act more swiftly and effectively in identifying and punishing every case.

The Working Group recommends to:

- **Guarantee a better information to the public about the Code and the way in which they can report breaches to the Committee;**
- **Choose the same symbols for all the networks to signal the type of programmes they are broadcasting; the signal should remain on the screen for the whole duration of the programme (see art.22 par.3 of Directive 97/36CE), while currently every network uses different symbols which are usually shown at the beginning of the programme and appear for a few seconds at the end of commercial breaks. Promote a classification system of TV programmes (see NICAM in The Netherlands¹⁰);**
- **Encourage and extend cooperation and synergy among all the organizations working for child protection including, Agcom, the Committee for TV and Child Protection, The National Board of Media Users (Consiglio Nazionale degli Utenti), Commissions created under articles 2 and 6 of RAI Contract as Public broadcasting Company, and the Bicameral Commission on Childhood;**
- **Guarantee that the authorized bodies impose penalties in a timely and effective manner;**
- **Plan a systematic monitoring activity on all TV programmes to be carried out by Agcom and aimed at safeguarding children (See Act 249/1997);**
- **Promote television and media education especially among teenagers (as defined by art. 10, par 9 of Act 112/2004, and by art. 5 of the RAI Contract).**

¹⁰ NICAM (Netherlands Institute for the Classification of Audiovisual Media) was created in the Netherlands with the aim of classifying every TV product with a special TV system of signals, similar to those used for toys, thus indicating any critical element of the programme, recommended age of the viewers etc.

- **Internet and children: serious concern for growing on-line child pornography**

On-line child pornography is made up of different elements: performance of every form of child sexual abuse, photographic documentation through video or audio recording, of the child abuse and violence, the distribution of this material via a huge IT system, other people's access to the images of the abuse, possibility to download these images.

On-line child pornography in Italy is monitored by law enforcement agencies and especially by the Postal and Communications Police Service (Servizio della polizia Postale e delle Comunicazioni). Data illustrating their work in the last years can be helpful to understand the scope of this phenomenon:

TABLE. 1 – NUMBER OF MONITORED WEBSITES, SEARCHES, PEOPLE INVESTIGATED, AND SUSPECTS TAKEN INTO CUSTODY OR SUBJECT TO OTHER RESTRICTIONS. ITALY 1998-2004¹¹

Law Enforcement Activities	Total
Monitored Websites	145.587
Searches	2273
People with restriction orders	115

Based on the **data** presented in the last “Report on the State of the Application of Act 269/1998”¹² it is estimated that 250 million copies of child pornographic videos were sold in the world for a total value of \$2-3 billion per year, with a significant share being covered by the US market. However it almost impossible to define precisely the scope of this phenomenon:¹³

- The market is comprised of commercial, semi-commercial and non-commercial sectors, none of which can be assessed accurately;
- the commercial sectors produce several copies of its products, which are in turn copied again in the non-commercial sector;
- once an image enters the market an uncontrollable numbers of copies can be made;
- the child pornography industry is constantly evolving due to reproduction and distribution technology innovation, such as internet, digital camera etc. The industry is also constantly changing and making new efforts to avoid controls and investigation activities.

The most troublesome factors are related to child **victims' identification**.

Interpol estimates that out of almost 250.000 images of child victims of sexual abuse included in there database, only 300 were identified.

In 1998, as a result of Operation Wonderland dozens of arrested were made in as much as 12 countries (3 arrests in Italy), computers, hard disks, floppy disks, Video cassettes were confiscated, yet only 16 of the 1,263 child victims were identified, amounting to a mere 1.26% of the total.

Despite the painstaking work carried out by the Italian law enforcement agencies, only few child victims were identified through the analysis of images taken from the internet. So far, there has been a special focus on repression of the phenomenon and coordination of the investigations. However

¹¹ Official Communication of the Postal and Communication Service. November 2004.

¹² See *Uscire dal Silenzio*, the state of application of Act 269/98. Quaderni del Centro nazionale di documentazione per l'infanzia e l'adolescenza, Florence, 2003.

¹³ Kelly L., Regan L., Rethorics and realities: sexual exploitation of children in Europe, London, University of North London, Child and Woman Abuse Studies Unit, 2000

legislators should make more efforts in the field of prevention, as well as provide the law enforcement agencies with all the tools and powers necessary to identify the victims.

As for the production, sale, distribution and possession of child pornographic material, **Act 269/1998** is the main legislative tool to safeguard the physical and psychological well-being of the child.

One of the most interesting aspects of this Act is that the legislators decided to grant the Postal police with special instruments to combat this phenomenon including the fake purchase of child pornographic material, and the creation of fictitious websites. This Act, however, fails to give a definition of child pornography thus causing a lack of consistency in its application.

In 2002 the Inter-ministerial Committee for the Coordination of the Fight against Paedophilia (Comitato Interministeriale di Coordinamento per la lotta alla Pedofilia) - CICLOPE, was created. Its objective is to coordinate all the activities that a number of State agencies carry out to prevent and fight paedophilia and integrate them with the actions taken by the third sector

In November 2003 a large majority of *Internet Service Providers* adopted a **Code of Conduct** called [Minori@Internet \(Children@Internet\)](#). In February 2004 a supervising Committee was established with the aim of monitoring the implementation of this Code and provide support and information on internet and children protection to experts and citizens alike.

The aforementioned bill 4599 (DDL 4599), that was presented in Parliament on January 13th 2004, has the intended purpose to implement the European Framework Decision (UE 2004/68/GAI) on the fight against child pornography that the European Council approved on December, 22nd 2003.

Considering that the Italy already tackled the fight against this phenomenon by passing Acts 66/1996 and 269/1998, this new bill should integrate and make up for the flaws of the already existing legislation.

Although bill 4599 helped clarify differing interpretations of the existing legislation, it was not effective enough in terms of victims identification, definition of child pornography and it didn't provide better crime prevention measures. By transposing the Framework Decision, bill 4599 has introduced two new types of crime in the Italian criminal code, namely the crime of apparent and virtual child pornography ("pedo-pornografia apparente" and "virtuale"), giving rise to further questions of legitimacy about what legal right is actually protected and also introducing double standards in terms of penalties.

Finally, the bill overlooked the importance of allocating resources in favour of prevention schemes and training programmes for those who operate in the legal and social sectors as well as police officers.

The Working Group recommends:

- that all government agencies focus more on the child victims' identification efforts, thus designing specific policies as well as allocating additional resources aimed at supporting law enforcement agencies in this type of work;
- that adequate indicators to assess this phenomenon be devised in order to plan the appropriate public policies. The assessment process should take into consideration not only abusers or users of child pornographic material, but first and foremost child victims of this type of productions;
- that child pornography be defined in a way that prevents any bias or excessive discretionary power in this matter. The adoption of the definition included in the **Optional Protocol to CRC on the sale of children, child prostitution and child pornography** is highly desirable;
- that only one body be appointed to collect all the reports, all the information available and useful technical details in order to identify the victims, avoiding overlapping of duties while improving efficiency in the fight against child pornography. Thanks to a constant and specific training, those working for this body will have to coordinate and favour any investigation aimed at identifying the victims, thus cooperating with international law enforcement officials;
- that an effective informational and awareness raising campaign be launched. The campaign should be aimed at children, taking into consideration their level of maturity

and their right to participate and be informed, as well as teachers, and all those who work daily with children and adolescents;

- that the Italian Government ratifies the Convention on Cybercrime that was drawn up by the European Council;
- that the CICLOPE coordination activity be extended to all the organizations of the third sector that work specifically on sexual child abuse at national level, thus preventing a waste of energies and resources and guaranteeing an effective coordination and monitoring of all actions taken.

IV. Child Trafficking

The UN Committee remains concerned at the numbers of children who are trafficked for sexual purposes in Italy. The Committee recommends that Italy strengthen its efforts to prevent and combat trafficking in children for sexual purposes, in accordance with the Declaration and Agenda for Action, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Sexual Exploitation

(CRC/C/15/Add.198, 31st January 2003, points 49 and 50).

Italy is involved in child trafficking both as a victims' destination country and as a transit country in routes that start from Eastern European and North African countries and head to Central and Northern European countries.

Child trafficking in Italy is strictly linked to sexual exploitation, particularly child prostitution, although in the last decade additional forms of exploitations emerged, including child labour, begging, illegal adoptions. However there are no data available on this phenomenon and it is equally difficult to make a reliable estimate of the number of victims of child trafficking in Italy. Indeed it is extremely difficult to identify victims of this phenomenon, there is a lack of communication among institutions that work on this sector and inconsistency in the procedures they follow. The only estimates available are released by the Department for Equal Opportunities and are based on the Special protection permits that are granted under article 18 of Legislative Decree 286/1998.

Certainly that there is a number of criminal organizations that deal in human trafficking, including children, that operate in Eastern Europe, in connection with organizations from other countries. Two main routes were identified:

- the first one is mainly controlled by the Ukrainian mafia with victims coming from Ukraine, Moldavia, Bulgaria and the Baltic countries. The victims enter Italy mainly through the Slovenian border, in the territory included between the provinces of Trento and Trieste;
- the second route is controlled by the Albanian mafia, the victims are Albanian nationals or citizens coming from other Eastern European countries. In this instance they enter Italy by boat, leaving from Durazzo and Valona and make a transit stop in Brindisi, Lecce and Bari¹⁴

Also other routes were identified as they are constantly evolving and starting especially from Romania.¹⁵

¹⁴ ENACT report "A Report on Child Trafficking in Bulgaria, Denmark, Italy, Romania, Spain and United Kingdom", Final publication of the European Project — STOP II Programme — ENACT (Establishing a European Network Against Child Trafficking), Save the Children, March 2004.

¹⁵ The Baltic route: from the inner regions of Russia by ferry to the Scandinavian countries; Eastern Europe route: through Poland, Hungary and the Czech Republic; Central European route: through Austria and Italy using the motorway network; Balkan route: not only through the Puglia region, but also arriving in Ancona by ferry; African route: not just from Morocco and Algeria, but especially from Libya. There is also an increasing number of children and young women coming from Lagos and Benin City, Nigeria, using ordinary airline carriers and flying to Milan, Rome, Paris and London. Data taken from the Conference organised by Terre des Hommes Italia on «La legge contro il traffico di esseri umani: parlano le Procure» — 23rd November 2004 Rome.

Victims' **identification** is particularly difficult especially because often victims of child trafficking are confounded with foreign non-accompanied children. Indeed these two phenomena are regulated by different laws and different protection measures. Victims of child trafficking are protected under art. 18 of Act 286/1998, while foreign non-accompanied children are protected by Act 189/2002.

In this respect, the entry into force of **Act 228/2003** was particularly important, as it confirmed Italy's determination to transpose the provisions included in the Framework Decision 2002/629/JHA of the European Council on the fight against human trafficking. This provision introduced more serious penalties in case of child trafficking, the principle of extraterritoriality, special protection for the child both during and out of the proceeding, more flexibility in the investigation activities.

Nevertheless, Act 228/2003 shows some flaws that could seriously compromise its impact, in particular with regard to the new definition of the crime of Slavery and Trafficking in human beings.

- due to the fact that the Italian criminal code already regulates the crime of "slavery" (*riduzione in schiavitù*), the new **article 600**, which was introduced by Act 228/2003, states that a part from being in a state of slavery, the victim must also be in a state of "subjection". Now such a state is very difficult to prove especially in case of child victims. It is therefore necessary to give an extensive interpretation of this provision, whereby it is possible to consider as subjection, the situation of victims who, although enjoying occasional instances of freedom, still are deprived of their free will. Moreover, child trafficking has evolved in time in such a way that it is difficult to identify a real state of subjection, as segregation and physical violence are less common. For instance, a victim can be controlled using mobile phones, and still be relatively free to move;
- Under the previous **article 601** the crime of child trafficking was recognised only when this was aimed at exploiting child prostitution. As a result court rulings had to be based on an extensive interpretation of this provision, thus creating a significant case law that extended the scope of this article. However, the new article 601 is still raising significant interpretation questions. It is true that the article has now been extended to cases in which the crime is committed for other reasons than the exploitation of child prostitution. Yet, this article requires a number of preconditions that makes it surprisingly difficult to be applied.

Indeed the previous provision stated that "Anyone trafficking or selling under-age children..." was punished with 6 to 20 years imprisonment. Therefore the fact that the victim was under age was a fundamental and defining element of the crime.

On the contrary, now, the fact that the victim of the crime is under age is not enough to envisage the crime of child trafficking. Many other elements are required for the considered behaviour to be punishable, namely a condition of slavery and subjection, as expressed in article 601, which, as it was said before, are particularly difficult to prove, especially in the case of child victim. To sum up, under the new article 601 the fact that the victim is under age is no more a fundamental element that defines the crime, but rather a mere aggravating circumstance. So, despite its wider scope, this new provision might hinder the possibility to prosecute those who commit the crime of child trafficking.

As far as **jurisdiction** is concerned under Act 228/2003 ordinary courts and not the Higher Court (Corte d'Assise) have now the power to rule on cases of child trafficking, thus streamlining and stepping up the whole proceeding.

Finally, as for the **new investigative procedures**, the new District Directorates for the fight against Mafia (Direzioni Distrettuali Antimafia - DDA) has now the power to investigate the crimes punished by articles 600 and 601 of the criminal code. This will guarantee a better international coordination of all the law enforcement agencies involved thus allowing to reconstruct a crime from its point of origin, especially when it perpetrated abroad. On the other hand this new investigative procedure might cause real problems in terms of coordination between DDAs and ordinary Public Prosecution offices. Indeed DDAs are in charge of investigating cases of trafficking, but they do not have the power to investigate

all those crimes that are often related to trafficking, such as illegal immigration which instead are still investigated by ordinary Public Prosecution offices. This difference in investigative powers might result in the investigation being interrupted every time the case file is forwarded to a different office, every time the crime of trafficking appears to be connected to other crimes for which DDAs have no power to investigate, thus causing overlapping and delays in the investigations.

Besides these technical problems, a number of Italian Public Prosecution Offices that are actively involved in combating human trafficking pointed out that Italy lacks a National Institution that should be a point of reference at national level and that should be responsible for collecting and processing official data on human and child trafficking in the country¹⁶.

Finally, of particular note is art. 12 of Act 228/2003 which requires the creation of a Fund against Trafficking (Fondo Anti-Tratta) aimed at financing victims' support and social inclusion schemes, but the necessary financial resources for this fund to operate have not yet been allocated.

The Working Group recommends:

- the ratification of the Protocol of Palermo (“Additional Protocol of the UN Convention against transnational organized crime to prevent, suppress and punish trafficking in persons, especially women and children”, 2000, Palermo);
- the introduction of specific procedures to identify victims of child trafficking, in cooperation with the countries of origin and taking into serious consideration that these countries often do not have an official Registry Office and therefore these children are even more at risk as they were never registered in the first place;
- the allocation of financial resources for the Fund against Trafficking as required by art. 12 of Act 228/2003

V. Child Prostitution

Child prostitution in Italy is a very complex and diversified phenomenon. First of all, it is important to make a distinction between female prostitution and male prostitution; while the first one has already been studied for years, the latter is almost unknown despite its widespread occurrence in the entire country.

Foreign female child prostitution is in many respects similar to adult prostitution both in terms of modes and motives. However, the fact that the victims are under age is an undeniable and major sign that child exploitation or child trafficking are taking place. This phenomenon occurs mainly on the streets, in the case of Nigerian girls, and in apartments in the case of girls coming from other countries, especially Romania. Rarely does an under age girl work as a prostitute in night clubs, as the owner would rather wait for her to become of age (18 year old). Child female prostitution covers as much as 10% of the total prostitution phenomenon.

Foreign male child prostitution occurs mainly outdoors, especially in railway stations, involving a younger age group (13-17 years), mostly Romanian boys from the Roma community, but also a minority coming from North-Africa, the Balkans and Albania. Characteristics, motives and possible scope of action concerning this phenomenon are very much different from female prostitution. This phenomenon is very common, yet very much neglected, and often is simply treated as a mere case of child trafficking or “paedophilia”, thus overlooking its distinctive features and the fact that most of the time these boys are not subject to coercion. Finally, it is important to make a distinction for the

¹⁶ Data taken from the Conference organised by Terre des Hommes Italia on «La legge contro il traffico di esseri umani: parlano le Procure» — 23rd November 2004 Rome.

situation of **Italian** male and female children and adolescents who, due to difficult socio-economic situation, choose or are forced to work as prostitutes (also in the streets) in order to support themselves or their family or to buy illegal drugs. There are also cases of Italian adolescents who occasionally choose prostitution in order to satisfy non-primary needs.

There is a lack of research studies and survey systems, as well as an oversimplifying approach to the problem, whereby prostitution is just considered as a case of exploitation, child trafficking and as other forms of sexual abuse. As for foreign children who are forced into prostitution, the Italian government started answering the needs of these victims by introducing the provision regulated by art.18 of the legislative Decree 286/1998 and passing the Regulations on the implementation of the Decree (D.P.R. 394/99)¹⁷ Under the aforementioned art.18, the Department for Equal Opportunities financed specific social protection projects managed by local authorities and the third sector. Between 2000 and August 2004, 296 social protection projects were launched, thus giving accommodation to 6,781 victims of human trafficking 318 of which were children. Over the years the number of children who entered the projects amounted to 4 to 6% of the total number of human trafficking victims. However these figures do not give a faithful representation of the phenomenon. Indeed children's participation in these programmes is less likely to occur as their prostitution activity is kept more secret and officials are therefore less likely to identify them.

Between 2000 and 2004 4,289 residence permits for social protection were granted, with a growing reduction of the average victims' age being noticed since 2003.

One of the main problems is the slow process required to grant residence permits. Waiting time vary significantly from region to region, but an average is at least eight to twelve months from the moment of the application to the actual issuing of the permit was noticed.

These slow procedures may interfere with the social protection process, so much as to stop it all together when, for instance, the victim who is not in possession of a residence permit, cannot have access to a job and therefore cannot become economically independent.

One more serious problem concerns the way in which this law is actually applied. Indeed the police (Questure) rarely apply the so-called "percorso sociale" (social procedure) which would allow access to the social programme without having to report their abusers to the police.

Indeed, despite the fact that the law clearly gives this type of opportunity, often police officers deny victims of serious cases of exploitation the possibility to have access to the programmes envisaged under Art.18 DLg. 286/1998 unless they report their abusers. This behaviour unduly reduces the social protection opportunities provided by this important provision.

Moreover the repressive policy implemented by the Government in the fight against street prostitution and illegal immigration produced a number of detrimental effects:

- under age girls coming from Eastern European countries are being kept secluded in flats, thus increasing their exposure to exploitation and their exclusion from society;
- Nigerian under age girls developed a growing mistrust of police forces. Indeed they are forced not to reveal their real age and are treated as so-called "clandestine" (illegal aliens), thus becoming even more dependent on their abusers;
- there was an increased drive for mobility of foreign male children who work as prostitute in urban areas. Indeed they are constantly changing town in an effort to escape frequent police raids, thus making contact with social workers even more difficult;

The worst aspect of government action, however, lies on the policy implemented through the introduction of Act 189/2002 (the so called Bossi-Fini Act), the rules for its implementation and a large amount of Ministerial circulars. This legislation is clearly aimed at preventing non-accompanied foreign adolescents from becoming legal immigrants, exercising their right to a job and most of all their right to

¹⁷ Art. 18 of the Legislative Decree 286/98 includes the promotion of social protection programmes for the victims of trafficking and exploitation for the purpose of forcing them into prostitution. These provisions include the granting of residence permits for social protection in order to "help foreign nationals escape violence and intimidation on the part of criminal organizations and to take part to social protection and integration schemes" (Art. 18, par. 1).

live an independent and decent life. Indeed those who come of age and want to regularize their position must follow procedures that are now more complicated, vague and basically unfeasible. As a result under age children who feel deprived of any prospect in this respect, are encouraged to enter or remain in the prostitution circuit.

In this respect the Committee for foreign children (Comitato minori stranieri) seems to ignore the need to identify and support children who chose or were forced into prostitution in the Italian territory.

Public Administration activities are not focused on the need to train state officials nor the members of third sector's organization that are authorized to carry out part of the Administration's tasks (the so-called "sociale convenzionato"). Training should be aimed at developing skills to identify and support child victims, whether they are victims of child trafficking, exploitation or simply in a difficult situation. The potential offered by cultural mediation should be fully developed so that all the actors involved can improve their skills and abilities to act swiftly in favour of child victims.

There is a clear and urgent need for an increased focus on the problem of child prostitution, and it is also necessary to act taking into consideration the distinctive features of this phenomenon, especially tackling the specific kind of trauma that child victims develop. This can be done by making the most of the expertise developed in the field of child victims of sexual abuse and ill treatment.

The Working Group recommends:

- **training police forces on the techniques to identify and support child prostitutes, not only those who are victims of exploitation, abuse or trafficking, but also those who were not subject to coercion. A joint plan of protection procedures coordination among all actors (police forces, public and private social services etc.) should be put in place.**
- **planning a less aggressive public order policy especially for migrants working in the street prostitution circuit;**
- **financing projects aimed at analysing and understanding male child prostitution as a specific phenomenon, as well as at the introduction of innovative instruments of damage reduction, health protection and promotion of opportunities;**
- **issuing a circular or rather a Regulation that clarifies the forms and procedures whereby foreign non-accompanied adolescents can regularize their administrative position once they come of age;**
- **strengthening intervention procedures that are based on international coordination so that action in the countries of origin, transit and destination becomes more effective, as well as promoting coordination at local level in order to upgrade identification, support, protection and social integration programmes.**

VI. The Sale of Children

There is a phenomenon that is a great cause for concern, yet it is not mentioned in the Government report. That is the false acknowledgments of paternity which are used as a way to hide the sale of new born children. There have been numerous cases of Romanian women who gave birth without acknowledging their maternity, while married Italian men acknowledged the babies as their children who therefore became members of their families. This was a way to avoid the regular adoption procedures, by exploiting the Italian law whereby married men can acknowledge their natural children even if the other parent does not.

Article 74 of Act 184/1983 provides for a procedure that should curtail this phenomenon. Under Art. 74 the registry officers will immediately forward the competent juvenile court a signed statement of the married person who declares that he/she acknowledged a natural child who was not acknowledged by the other parent. The Juvenile court will order an investigation on the truthfulness of this acknowledgment. In case of well-grounded reasons to believe that this acknowledgment might be false, the juvenile court will act under article 264, second paragraph of the civil code.

The Working Group recommends:

- that Courts carefully monitor the declarations of acknowledgment under art.74 of Act 184/1983.

VII. Child Sexual Abuse and Exploitation

*In the light of article 19 of the Convention, the **UN Committee recommends** that Italy:*

- (a) Undertake studies on violence, ill-treatment and abuse against children, especially those from vulnerable groups, including sexual abuse, particularly within the family and at schools in order to assess the extent, scope and nature of such practices;*
- (b) Develop awareness-raising campaigns with the involvement of children in order to prevent and combat child abuse;*
- (c) Amend its legislation regarding the existing age-limit set for a special protection against all forms of violence against children;*
- (d) Evaluate the work of existing structures and provide training to professionals involved in these types of cases; and*
- (e) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse, within the family through a child-sensitive inquiry and judicial procedure, in order to ensure better protection for child victims, including their right to privacy.*

(CRC/C/15/Add.198, 31st January 2003, point 38)

It is extremely difficult to monitor child sexual abuse; indeed this phenomenon is considered to be almost “obscure”.

Available data and investigations undertaken show different ways to analyse this problem. First of all it is very difficult to define such a complex phenomenon, secondly professionals working in the field rely on different criteria.

Official data on child abuse are released by the Ministry of Home Affairs while statistical data refer to cases reported to law enforcement agencies. Therefore this data refers only to a very limited portion of the entire phenomenon. At national level, estimates about the scope of this phenomenon are not very reliable, while it is easier to obtain more reliable data at regional level or through selected samples among children cared for by specialised public or private social services.

Based on a research study carried out in 1998¹⁸ on 1,088 cases reported and/or followed by specialised centres, 33.5% involved sexually abused children.

One of the main obstacles is posed by the fact that most of the abuses take place within the family and for Italian culture family enjoys a special status and a great value is attached to it, so that family members reluctantly report information about domestic violence.

It is almost impossible to provide a reliable assessment of policies implemented in this area. This is due to the fact that there is a lack of statistical data collected in a consistent manner on child violence, including sex abuse. Moreover there isn't a national body that has the task to collect data about children reported to social services and requiring support and protection, including in cases of psychological ill-treatment. Finally there isn't a common and shared system to calculate financial resources allocated for protection and support activities in favour of at-risk or victimised children. This situation also compromises the possibility to plan actions to be carried out at national and regional level.

¹⁸ Research studied carried out by CISMAI - Coordinamento Italiano dei Servizi contro il Maltrattamento e l'Abuso all'Infanzia (Italian Coordination of Services against Child Ill-treatment and Abuse)

Protection and support policies require a closed and constant cooperation among all social services, as well as among these services and institutional bodies, whether their are political, legal, administrative or educational.

A number of inter-institutional and multi-disciplinary **coordination centres** were created, but they differ very much in terms of continuity and effectiveness of action.

Actions carried out so far can be divided into three categories:

- 1) coordination between political and administrative authorities. Police forces, judicial authorities and municipalities called for this type of coordination centres to devise prevention and training schemes as well as protocols on common procedures or agreements to implement projects to be financed under Act 285/1997;
 - 2) technical coordination among different service providers and multi-disciplinary groups made up of officials who work with abused children. They often assess the implementation of methodological protocols used to report, assess and treat abused children. They also act as consulting bodies for social services officials, but they may also be authorized to act in place of the aforementioned inter-institutional bodies;
 - 3) multidisciplinary teams made up of professionals working in the social and healthcare system. They usually take care of abused children or carry out analysis of the data collected by other professionals and referring to health and/or psychological assessments.
-

The strong point of these experiences is the coordination of efforts. Indeed coordination is the only element that can guarantee a swift and adequate intervention aimed at stopping violence. On the other hand there are two major weak points. First of all these centres are only temporary, unless they are formally recognised. Secondly there is a significant staff turnover. As a result, significant and positive experiences were brought to an end due to these two critical elements. In other cases, instead, time, human and financial resources were wasted.

Regional authorities have lately fostered the creation of inter-institutional committees aimed at encouraging cooperation among all the organizations involved in abused children protection. Moreover, a number of Regions introduced multi-disciplinary protocols to identify and report cases. The Lazio Region, for instance, introduced this protocol with resolution n. 3846 on 13/07/1999, as well as the Emilia Romagna Region with resolution n. 1913 on 26/10/1999. Piedmont passed resolution n. 42 dated 02/05/2000, Veneto passed a resolution in 1999, Tuscany passed resolution n. 313 in March 2002, and Lombardia is currently discussing a resolution.

One more problem was posed by the lack of national guide lines that could guarantee a minimum standard in services and actions aimed at identifying, assess cases as well as treating and protecting abused children. As a result of the **reform of the V Title of the Italian Constitution**, regions have now exclusive powers over social policies, thus raising concerns for an excessive diversification of policies and for a further North-South divide as far as available resources are concerned.

Article 4 of **Act 285/97** makes clear reference to prevention and support actions in cases of child abuse and child sexual exploitation, abandonment, ill-treatment and violence. So, from 1998 to 2002 there was a positive increase in local authorities' and third sector's ability to design projects to the establish specialised centres, launch awareness-raising campaigns and training schemes. Thanks to Act 285/1997 for the first time in Italy a comprehensive legislative tool was created for the promotion of children well-being and the protection of children rights.

Over a time of three years since Act 285/1997 entered into force, 95 projects were launched for a total of 349 single actions/activities carried out in the field of prevention and protection of abused and ill-treated children. These activities focused on three aspects: 1) support to all agencies involved, whether public or private, 2) increased skills and abilities, also through the creation of specific training courses, for the early report of ill-treatment cases, 3) creation of new services and further specialisation and upgrading of existing ones.

Services' specialisation is the sector that received lower investments, as less than 25% of total resources were used to develop projects aimed at victims treatment. Also other projects, supported by other funds, went through a similar experience, that is, they failed to focus on child protection, especially at the final steps of the procedure, thus compromising the children's rights to health care, appropriate treatment and opportunity to live a decent life.

Act 328/2000 introduced the creation of one single fund for all social policies, enshrining the objectives outlined in Act 285/1997 and that, under art.22 par. 3, will be at the core of the integrated system of intervention. It is therefore fundamental to closely monitor the implementation of this Act at regional level in order to make sure that the problems of child abuse and sexual exploitation will be carefully tackled in future projects. Indeed paragraph 3 also makes explicit reference to Acts 66/1996 and 269/98 when outlining the objectives that integrated social policies must pursue.

Equally important is the need to better define basic **social protection services**, which are still provided for at national level. These type of services are considered basic in that it is believed that citizens cannot do without them and, as such, citizens have a right to demand the provision of these services. These services are strictly linked to the specific needs of the citizens and to their personal situation. Some wonder which child victims' specific needs will be recognised at this level.

Moreover some concerns are raised by the current dismantling of the Italian social protection system, whereby many services will be provided by private companies. Indeed this might compromise the development of protection programmes especially for foreign sexually abused children.

Finally, as for the **implementation of Acts 66/1996 and 269/98**, most of the problems are due to an uneven distribution of human and financial resources throughout the country, such as accommodation centres, treatment centres, health care facilities, hospitals that specialise in medical diagnosis etc). Therefore there is an urge for the promotion of a wider knowledge of the phenomenon as well as further training, using available human and financial resources in a way that strikes the right balance between the need to collect information and the need to provide specific cures and treatments.

The Working Group recommends:

- the creation of a national system for the a constant and consistent collection of disaggregated data (location, age, ethnic groups, gender etc.) on child violence;
- the adoption of national guide lines for cooperation among regions in order to favour the reporting, assessment of cases as well as child victims' protection and treatment. Guide lines should also be developed to guarantee a common minimum standard of services and actions;
- monitoring the implementation of Act 328/00 at regional level to make sure that the problems of child abuse and sexual exploitation will be carefully tackled also in new projects;
- allocation of further human and financial resources to treat child victims, assess parental skills and, whenever it is possible, treat parents responsible for their children ill-treatment and abuse;

• Interviewing abused children

An especially sensitive issue concerning child abuse is that of interviews in the judicial process with children believed to have been sexually abused. Acts 66/1996 and 269/98 introduced some effective instruments aimed at protecting the victims of sexual abuse, first and foremost during the testimony, introducing specific provisions regulating the timing, forms and rules for the testimony of children under sixteen.¹⁹ This was a fundamental and cultural turnaround, as in the past there had been a special focus on the protection of the defendant's right rather than the victim's rights, especially child victims.

In principle, these provisions are aimed at meeting the child needs and difficulties, making sure that he/she is protected during criminal proceedings. These provisions were also introduced to favour a more close cooperation among practitioners both for the sake of justice and the child. These two objective are therefore considered as equal, however the daily application of the law shows that reality can be very different.

As for the "protected hearing" (audizione protetta), provisions proved to be still inadequate and non-exhaustive, so that especially their most innovative aspects were rarely put into practice. But even when implemented, officials did it using their own subjective interpretation so that they completely jeopardised the very protection that is at the heart of these provisions.

Moreover judges are granted a significant discretionary power over the forms of protected hearing. They are free to decide who should be interviewed and how; judges can be alone with the child or at the presence of an expert or the expert can carry out the interview while the judge follows it from behind a mirror. Now, it is important to understand that such discretionary power is exercised in the framework of a specific judicial system, the Italian judicial system, which is often characterised by an adult-centric approach. This of course hasn't favoured the correct implementation of these provisions for the protection of children's rights.

Equally significant is the role played by defence attorneys in trials for child sexual abuse. These attorneys do not hesitate to make choices that will damage the victim's psychological sphere. For instance, they object to any type of "preparation" of the child for the trial and to any form of support offered to the child during the protected hearing. They also try and constantly interrupt the Judge for Preliminary Investigations (GIP) as he/she is taking the child's testimony thus ignoring the provision that prohibits child cross-examination.

The child should receive a specific "preparation" to the hearing, in order to prevent any form of 'positive' leading questions and effectively tackling the risks of 'negative' leading questions which usually cause a disruption of communication. This is not about more or less directly suggesting the child the answers to the questions that will be asked, but rather this is about making sure that the child has some time to better understand and put in context the experience he/she is about to go through.

In order to prevent children's re-victimization there should be a reasonable limit to the number of times the child is interviewed. Still, it is undeniable that the child is usually interviewed by several

¹⁹ In order to protect child victims and spare them the trauma of appearing in court for their testimony, Act 66/96 states (art 392 par. 1 bis of code of criminal procedure) that in the framework of criminal proceedings for the crimes of simple or aggravated rape and sexual harassment, "sexual interactions" with children, child abuse, and rape committed by a group of persons, it is possible to hear the testimony of a child (under the age of 16) through the so called "incidente probatorio". This is a way to hear the testimony and therefore take the evidence during the pre-trial stage of the criminal proceeding (translator's note). Act 269/98 has further extended this safeguarding provision to the crimes of child prostitution, child pornography and tourist activities aimed at the exploitation of child prostitution.

Act 66/96 (art. 398, par.5 bis of the code of criminal procedure) introduced the so-called "protected hearing" (audizione in forma protetta) introducing procedures aimed at avoiding that the whole courtroom setting might inhibit and scare children.

However this provision has been criticized as it is vague and non-exhaustive and therefore unevenly implemented throughout the nation.

Art. 609 decies of the criminal code guarantees child victims an emotional and psychological support along the entire criminal proceeding through the presence and support of parents and qualified professionals accepted by the child and authorized by the relevant judicial authority.

people, including the police, the public prosecutors, practitioners in specialised centres. The child is also interviewed using different methods and in different settings: in police stations, in court, in specialised centres

The situation varies from region to region but also from court to court, while it is desirable that the positive results achieved in some areas and the rewarding experiences that result from the painstaking work of serious professionals be extended to the rest of the national territory.

Anyway, the situation has improved significantly thanks to a number of initiatives such as agreements among some judicial departments, meetings, debates and seminars for all the practitioners involved. A team of public prosecutors who specialised on this matter was created, and a special police section was also established. Public and private specialised centres also play a major role, as well as the research studies and training schemes that they organise.

The last **“Plan for Childhood” (Piano Infanzia) 2002-2004** tackles the issue of child abuse and violence. However, there is still much to do in order to put into practice the commitment taken in this Plan for the introduction of legal provisions aimed at safeguarding children in criminal proceedings. In particular there is a special urge for:

1. the integration of the provision introduced by art. 609 decies of the criminal code with a penalty aimed at guaranteeing the full respect of this provision; in particular to guarantee the emotional and psychological support to child victims, which gives the child a real opportunity to exercise his right to be heard;
2. a general review of art. 392 par. 1 bis and art. 498 par.4 ter of the code of criminal procedure, in which it is stated that the child victim’s testimony must take place only in the form of protected hearing, that is using the a mirror-glass and an interphone system in order to prevent the child from meeting the accused.

The Working Group recommends:

- that special commitments be taken to guarantee practitioners training as well as common procedures throughout the country;
- that Government put into practice the aforementioned commitments taken during the last Plan for Childhood 2002-2004.

VIII. The role of Italian Cooperation for the protection of victims of child ill-treatment, abuse and exploitation.

The UN Committee welcomes the adoption of the Guidelines of the Italian Co-operation on Children and Adolescent Issues offering a vision of the development of the younger generations as an area of investment. Nevertheless, the Committee remains concerned that the Convention is not implemented to the "maximum extent of ... available resources", as stipulated by article 4 of the Convention. (CRC/C/15/Add.198, January 31st 2003, point 8)

In reference to international cooperation a number of points should be raised.

Awaiting the future reform of Act 49/1987, that is supposedly going to totally review international cooperation, some of the existing provisions should be fully implemented.

The work of the Directorate General for Development Cooperation (Direzione Generale per la Cooperazione allo Sviluppo) –DGCS operating within the Ministry of Foreign Affairs is at a standstill. There is an urgent need for experts and a significant number of projects that have yet to be assessed. In particular, the Guide lines for the cooperation on children issues, that were adopted in the resolution 26/11/1998 n. 180 and further updated in May 2004, are not yet considered as a shared and common resource for DGCS.

On the occasion of the UNGASS the Italian government pledged to make every efforts to donate 0.7% of its GNP to ODA. Also, considering the urgent and specific needs of childhood, the Italian

government also pledged to quickly reach the objective set by the EU, that is a 0.33% donation to developing countries by 2006. However, based on the OECD-DAC data on public aid to development, Italy ranks last, after the US, with a 0.15% against a 0.17% donated in 2003.

Finally, it should be stressed that some information included in the government report may raise a few doubts as under the heading “Participation by civil society in international cooperation projects and initiatives”, reference is made to cooperation projects carried out by Italian NGO’s that the Government not necessarily co-financed. While under the heading “Italian participation in European projects” reference is made to projects that were actually carried out by Italian NGOs. So it would have probably been better to change the heading to “Italian NGOs participation in European projects” Finally, the criteria used to select the projects included in the report are not at all clear.

The Working Group recommends:

- the adoption of the 1998 Guide Lines, that were updated in 2004, as a starting point for the Italian cooperation activities, including the definition of short, medium and long term action plans, expected outcomes and specific deadlines;
- a real effort to put into practice the promises made in the UNGASS document.

Chapter 2

The implementation in Italy of the Optional Protocol to the CRC on the involvement of children in armed conflicts

Italy ratified the Optional Protocol to the CRC on the involvement of children in armed conflicts with Act 46, 11 March 2002.

The Protocol disposes that within two years from the entry into force of the ratification law, each State Party has to submit a report to the UN Committee, providing comprehensive information on the measures that have been taken to implement the provisions of the Protocol itself.

Subsequently, information regarding the implementation of the present Protocol shall be included in the comprehensive Periodic Report on the *status* of the implementation of the CRC, that the Italian government sends every 5 years to the UN Committee.

On May 2004 the Inter-ministerial Committee for Human Rights coordinated by the Ministry of Foreign Affairs sent the first report. According to the model fixed by the Guidelines of the Committee itself, information was presented making reference to the first seven articles of the Protocol. The following observations will be presented in the same way.

Article 1

Measures adopted to ensure that members of the military forces under 18 years of age do not take direct part in hostilities

The Italian legislation does not include any specific Act on military service, but only a series of Acts and implementing provisions, which regulate both the compulsory military service and the professional army.

Following the entry into force of Act 46/2002 which ratifies the Optional Protocol to the CRC on the involvement of children in armed conflicts, and after the submission of the Italian Declaration to the Committee on the Rights of the Child, no provision introducing measures to prevent under age members of the military forces from taking directly part in hostilities was adopted.

There is no rule that provides measures to watch over the real non-participation of minors, neither an explicit definition of the concept of “*direct participation*” is provided. Indeed, the definition included in the Government Report dated May 2004 is only inferred from the provisions of Act 2, 8 January 2001.

Article 3.1 and 3.2

Minimum age for voluntary recruitment of persons into national armed forces

The minimum age for voluntary recruitment is not clearly identified in the legal provisions. By repealing abrogating art. 3 of Act 191/75, Act 2/2001 on compulsory and voluntary military service sets 18 years as the minimum age for voluntary recruitment. The same minimum age is also mentioned in Act 226/2004, *Volunteers for a fixed time of one year*, in which art. 4 provides that a minimum age of 18 years shall be required for recruitment in the professional army. Only the Declaration adopted by Italian Government on the occasion of the ratification of the Protocol sets the minimum age for the voluntary recruitment at 17 years. Indeed the Declaration states that: “*The Government of the Italian Republic declares, in compliance with article 3:- That Italian legislation on voluntary recruitment provides that a minimum age of 17 years shall be required with respect to requests for early recruitment for compulsory military service or voluntary recruitment (military duty on a short-term and yearly basis)*”

Furthermore, there is some confusion about the meaning of “voluntary recruitment” and “enrolment/admission to military schools”. Such confusion can be also found in the Government Report that refers to the paragraph dedicated to military schools and concerning the required information on article 3.3 of the Protocol on voluntary recruitment.

Article 3.3

Information on the implementation of the adopted safeguards and on the procedures used to ensure the voluntary connotation of the recruitment.

First of all, we have to point out that criteria and procedures of information which should give to minors and their parents the possibility to give an informed consent to the voluntary recruitment, are not established in any specific administrative or legislative provision.

Moreover, according to article 16 of the regulation regarding conditions of admission and attendance to military schools, on their 16th birthday, that is one year after enrolment, students attending such schools must apply for a three year “voluntary recruitment”; the punishment for not doing this is the expulsion from the school itself.

We report that such provision causes the dissolution of the genuinely “voluntary” connotation of the recruitment, in violation of art. 3.3 of the Protocol, since the application for the recruitment is a pre-condition for the possibility to complete the course of studies in the military school itself. There are also doubts about the principle of “awareness”, as there is no provision outlining the characteristics that the information should meet in order to provide the minor with an informed overview of the duties involved in such military service.

Finally, it’s important to point out there isn’t a very clear indication of the starting date of such a three-year voluntary recruitment. Indeed military schools regulations, also quoted in the Government Report, do not state whether such three years period shall begin immediately after the acceptance of the application or at the end of the course of studies, or on the students’18th birthday.

Article 3.5

Schools under the administration of military forces

As it is stated in the Government Report, programs for information and education on human rights, children’s rights and humanitarian law are not included in military schools’ *curriculum*.

The amount of hours devoted to specific military training is not indicated explicitly in the programs.

Whereas, as for statistical data regarding students enrolled in military schools, we report that no disaggregated statistical data regarding geographical origin, socio-economic conditions of the family, ethnic group etc. are available. Indeed, the Government Report mentions generically “every region and various social origin”, without providing precise disaggregated statistical data and information to support this statement.

Article 6.2

Measures adopted to guarantee the effective implementation of the Protocol

The technical-normative analysis annexed to the bill for the ratification of the Protocol states that in reference to the implementation of the Protocol it is not necessary to adopt any new provision aimed at harmonizing the existing national legislation with the principles of the Protocol, nor it is necessary to adopt any specific provision, internal regulation or act to implement the Protocol, because the national legislation is already in line with the provisions of the Protocol itself.

Concerning the activities promoted by the Italian state to spread the principles of the Protocol both among adults and minors, we underline that they were inadequate on the whole territory. The dissemination of the information took place mainly through NGOs, voluntary work associations and in particular, through the National Coalition “Stop using child soldiers”. We also report that the above mentioned Coalition made up of various NGOs is erroneously indicated in the Government Report among the activities carried out by the Government related to disseminate the Protocol’s contents.

Finally, we underline that at the moment of the drafting and publication of the present report, the Italian version of the Government report presented on May 2004 was not yet available, and that the Secretary’s Office of the Geneva UN Committee sent the relative information to the Italian NGOs. Indeed they didn’t receive any communication from the Inter-ministerial Committee for Human Rights neither during the drafting of the report nor afterwards, even though this was prescribed.

The Working Group recommends:

- the adoption of specific provisions prescribing measures that prevent the participation of minors in case of warlike hostilities and set monitoring mechanisms to make sure that this does not happen;
- the adoption of provisions identifying precise criteria and modalities of information, so that the recruited can be exhaustively informed about the duties involved in such military service and so that the recruitment can be decided with the informed consent of parents or legal guardians (ex art 3.3);
- the inclusion of courses on human rights with particular attention to the rights of the child and the humanitarian law in the curricula of military schools;
- the collection and dissemination of disaggregated statistical data and information on children who enrolled in military schools. Data should be disaggregated on the basis of socio-economic conditions, cultural conditions and the area of origin;
- that the age at which students of military schools must apply for a three-years recruitment be raised from 16 to 17 years, so that they can complete the course of studies;
- the dissemination of the Government Report, presented to the UN Committee in English on May 2004 by means of the Inter-ministerial Committee for Human Rights coordinated by the Ministry of Foreign Affairs and through its website as well.