



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

## Submission by the Italian Ngo Group for the CRC related to Italy for Universal Periodic Review 7<sup>th</sup> session<sup>1</sup> Children's Rights in Italy: Key Issues of Concern

### I. BACKGROUND AND FRAMEWORK

#### A. Scope of international obligations

##### **The European Convention on the Exercise of Children's Rights, Strasburg 1996**

In the third and fourth reports of the Italian Government to the UN Committee on the Rights of the Child, it was mentioned that "Parliament's initial decision to give limited application to the dictates of the Convention", adopted in Strasburg on 25 January 1996, through Law 77/2003, would be rectified by the entry into force of Law 54/2006. This limited application, which was announced by the Ministry of Foreign Affairs when the instrument of ratification was deposited, considered the obligation to hear minors something which would rarely be applied. The entry into force of Law 54/2006 appears, however, to have done very little to change the situation, except with regard to the specific scope of the law (separation and divorce proceedings). It also contains a number of limitations (with differences in how the law is applied as a result of the different interpretations of the various courts).

➤ **The Italian Government should** modify the statement made when the Convention was ratified so that it can be applied to all proceedings involving children.

##### **Optional Protocol CAT**

Italy has still not ratified the Optional Protocol to the UN Convention Against Torture (CAT). Indeed, the Italian Government has not yet submitted the Ratification Bill to Parliament, despite the undertaking it gave to the UN when it applied to become, and was subsequently elected, member of the Human Rights Council in 2007. The Optional Protocol includes a system for the prevention of torture based on visits carried out by independent national and international bodies to places where there are people, including children, who have been deprived of their personal freedom.

➤ **The Italian government should** ratify the Optional Protocol to the UN Convention Against Torture, in line with the undertakings it has given, also as a result of its being a member of the UN Human Rights Council.

#### B. Constitutional and legislative framework

##### **Reform of the juvenile justice system**

The long-awaited reform of the juvenile justice system, aimed at making the system better organised and necessary to overcome the difficulties caused by the fact that juvenile courts have jurisdiction over very large areas, has still not been introduced.<sup>2</sup> Indeed, parliamentary discussions have not even begun on this topic.<sup>3</sup> Since there is no single body that is specialised in matters involving minors and family law, in accordance with the Court of Cassation ruling 8362/2007 and subsequent decisions confirming this ruling,<sup>4</sup> jurisdiction over issues relating to the placing in care and the maintenance of children born out of wedlock

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<sup>1</sup> The document is available on the Gruppo CRC website [www.gruppocrc.net](http://www.gruppocrc.net)

<sup>2</sup> Juvenile courts were first up in Italy in 1934 (R.D. 20/7/1934 No.1404).

<sup>3</sup> Two bills have been presented: S.178 on 29 April 2008; C. 393 on 29 April 2008.

<sup>4</sup> Ruling 19406/2007, and Ruling 19909/2007 in [www.minoriefamiglia.it](http://www.minoriefamiglia.it)

is held by the juvenile courts, while for children born in wedlock it is held by the ordinary courts (Tribunale Ordinario).

➤ **The Italian government should** proceed with the reform of the juvenile justice system, creating a single specialised body with exclusive jurisdiction.

### **Prison rules**

The reform of the prison rules in Italy has still not been carried out, with Parliament even failing to take any initiatives on this issue. There are, therefore, still many shortcomings in the system, which have been criticised on many occasions by more enlightened jurists. There are no specific prison rules for juvenile offenders, that would enable them both to serve their sentences and to enjoy their rights deriving from international conventions ratified by our country and the rules of the UN.<sup>5</sup> The introduction of specific rules would make it possible to highlight the central role of alternative sentences to prison as an effective means of assisting the rehabilitation of juvenile offenders, which is aimed at their social reintegration.

➤ **The Italian government should** re-examine the draft laws drawn up on 15 January 2008 by the Ministry of Justice, so that it can proceed forthwith with the drafting of a bill for the reform of the juvenile prison rules.

## **C. Institutional and human rights infrastructure**

### **Lack of a National Ombudsman for children's rights**

Despite the fact that Italy has signed and ratified treaties and other European and international legislative documents binding the State Parties to set up a National Ombudsman for children's rights, acting both alone or as part of a national independent body to promote and safeguard human rights,<sup>6</sup> neither of these types of Ombudsman has yet been set up. During the last few years, the UN Committees set up to monitor the application of the UN Conventions ratified by our country have made a number of recommendations<sup>7</sup> to Italy, urging the Italian Government to promptly respect the undertakings it has given, primarily through the ratification of the CRC and the European Convention of Strasburg on the Exercise of Children's Rights, and, most recently, with the formal undertaking it gave before the UN General Assembly in 2007, when applying to become a member of the UN Human Rights Council.<sup>8</sup> Although numerous bills have been submitted to Parliament on both the creation of a National Ombudsman for children's rights and a national independent body to promote and safeguard human rights, the passage of these bills through Parliament has always been blocked. So far neither of these two figures has been introduced.

With regard to the creation of a National Ombudsman for children's rights, the present Government has submitted a bill to the Chamber of Deputies.<sup>9</sup> While appreciating the Government's desire to find a solution to this problem, it has to be mentioned that this bill, as it stands, does not meet international standards concerning this figure. These standards have been outlined in key documents, such as the Paris Principles, General Comment No. 2 of 2002 of the UN Committee on the Rights of the Child and the ENOC guidelines (*European Network of Ombudspersons for Children*). There are various critical areas concerning the lack of the necessary features for this figure to be hierarchically and functionally independent and

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<sup>5</sup> CRC; European Convention of Strasburg on the Exercise of Children's Rights; the Minimum Rules of the UN for the administration of juvenile justice or "Beijing Rules".

<sup>6</sup> Cf. General Comment No.2 in 2002 of the UN Committee on the Rights of the Child – points 4 and 6.

<sup>7</sup> Cf. Concluding Observations addressed to Italy by the UN Committee on the Rights of the Child in 2003, points 14 and 15, and in 2006, point 17; Concluding Observations addressed to Italy by the UN Committee on the Elimination of Racial Discrimination in 2008, point 13; Concluding Observations addressed to Italy by the UN Committee against Torture in 2007, point 8; Concluding Observations addressed to Italy by the UN Human Rights Committee in 2005, point 7; Concluding Observations addressed to Italy by the UN Committee on Economic, Social and Cultural Rights in 2004, point 32.

<sup>8</sup> Document A/61/863.

<sup>9</sup> A.C. 2008 "National Ombudsman for children" submitted to the Chamber of Deputies on 11 December 2008.

the lack of the necessary financial and specialised human resources.<sup>10</sup> There is also a lack of incisiveness with regard to the Ombudsman's competences, which need to be linked to those of existing bodies in the system that promote and safeguard children rights.<sup>11</sup>

➤ **The Italian government should** pass legislation to set up a National Ombudsman for children's rights acting either alone or as part of a national independent body to promote and safeguard human rights. This Ombudsman must be hierarchically and functionally independent, highly specialised and have the necessary financial and human resources to function effectively, in line with the minimum standards described in General Comment No. 2 of the UN Committee on the Rights of the Child and in the Paris Principles, and in accordance with the treaties ratified by Italy.

## **D. Policy measures**

### **Lack of National Plan for Childhood**

The National Plan for Childhood, introduced by Law 451/1997, is a two-year instrument by means of which the Government is meant to define the framework of reference for national policies concerning children. Despite numerous appeals and repeated recommendations, the last plan to be passed was for the period 2002-2004, the third plan to be passed since Law 451/1997 came into force<sup>12</sup>. Italy has, therefore, been without a National Plan for Childhood for the last 5 years and only three National Plans have been passed in the 12 years since the law was introduced.

➤ **The Italian government should** pass a new National Plan for Childhood as soon as possible, following the indications contained in the D.P.R. 103/2007.

### **Lack of data**

There are shortcomings in the Italian system of data collection, often involving particularly vulnerable groups of children. Despite the fact that in some cases there is a legal obligation to set up a data bank and keep it up-to-date, these data banks still do not exist. While recognising the difficulty in monitoring and collecting data on complex, rapidly changing phenomena, such as human trafficking, the Italian NGO Group for the CRC has highlighted the seriousness of the lack of data, or up-to-date data, on situations, such as children who have been placed in foster care or a community, or child victims of abuse or neglect who have come to the attention of the social services. This shortcoming in our system means that it is impossible to estimate the frequency of such phenomena, which constitutes an obstacle to planning and the introduction of suitable policies and actions. There is a problem, in particular, with regard to **children living away from their families**. The last available data on children placed in foster care or in communities dates back to 2005, and this data is also incomplete (as it does not include the data for Sicily). Moreover, the data bank for children declared adoptable and aspiring parents for national and international adoptions (in accordance with Art. 40 of Law 149/2001), which should have been activated within 180 days of the law being passed, has still not been set up. With regard to **child victims of abuse**, Italy still does not have a national system to record the maltreatment of children, the incidence of

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<sup>10</sup> In accordance with art. 5 A.C. 2008, the Ombudsman does not have his own separate structure to carry out his tasks. Instead he uses the human, financial and physical resources of the Department for Family Policies and the Department for Rights and Equal Opportunities of the Presidency of the Cabinet, with a financial allocation provided by art. 7, of € 200,000.00 (as was suggested in the technical report annexed to the bill A.C. 2008). This only considers "the remuneration of the Ombudsman" and does not therefore enable the Ombudsman to carry out his functions adequately.

<sup>11</sup> In the text of the bill AC 2008, which was used as the basis for Parliamentary discussions, there is no mention of the coordination between the National Ombudsman and the equivalent regional authorities. This function is essential and needs to be guaranteed by means of, for example, a National Conference of Ombudsmen.

<sup>12</sup> The Government's Action Plan for Childhood 1997/1998, and the National Action Plan for the safeguarding of the rights and development of subjects in developmental age 2000-2001.

the phenomenon, its epidemiology, the risk factors or its causes. Although a pilot action was developed by the National Centre for the Documentation and Analysis of Childhood, this project was only introduced by five Regions and even in these Regions it was experimented with in just a few small areas, without ever becoming a "national system". With regard to the specific field of sexual exploitation, here too the data bank at the *National Observatory to Combat Paedophilia and Child Pornography* is still not operational.

➤ **The Italian government should** take action to eliminate the shortcomings in data collection in order to arrive at a global data collection system, centred on children, which contains uniform, representative data from the various Regions so that the data is comparable and can rapidly be updated.

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A. Implementation of international human rights obligations

#### 1. Equality and non-discrimination

##### **Adoption of effective measures to prevent and eliminate regional differences**

Following the change to Title V of the Constitution<sup>13</sup> and the entry into force of Law 328/2000, the Regions are exclusively responsible for social policies, while central government has the task of identifying the Essential Levels of Social Services (LIVEAS)<sup>14</sup> which must then be respected throughout the country. However, the LIVEAS, the aim of which is to identify specific levels of civil and social rights and ensure they are applied uniformly across the whole country, have still not been defined nine years after the entry into force of Law 328/2000, even though this was identified as a priority in the "National report on the strategies for social protection and inclusion 2006-2008" (NAP Inclusion).<sup>15</sup>

70% of the National Fund for childhood, in accordance with Law 285/1997, is incorporated in a general national fund for social policies, while the remaining 30% is allocated to 15 specific Metropolitan areas (the so-called *città riservatarie*),<sup>16</sup> thereby creating important differences between these Metropolitan areas and the rest of the country. The enormous differences that exist between Regions are also shown by the fact that the Ombudsman for children's rights has only been appointed in 6 Regions, that only 10 Regions have a register able to monitor the schooling of children, and that not all the Regions have created a register for children placed in care (i.e. living away from their original families). Moreover, only 15 Regions have set up a regional children's observatory or centre, with only 11 of these having taken any kind of action and only six of them functioning properly in April 2008<sup>17</sup>.

➤ **The Italian Government should** determine the LIVEAS and in this way guarantee a uniform application of children's rights throughout the country.

##### **Discrimination against children with disabilities**

The lack of reliable data in Italy on both Italian and foreign children with disabilities is a problem that has been highlighted for some years now by the Italian NGO Group for the CRC. The biggest shortcomings concern the 0-5 age group, since it is when children are enrolled at school that data is started to be collected. It is clear, however, that in order to enjoy the right to health, it is necessary to have suitable data (both quantitatively and qualitatively) from birth. Only in this way is it possible to carry out the necessary planning and to approach

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<sup>13</sup> Constitutional Law 3/2001 «Changes to Title V in the second part of the Constitution».

<sup>14</sup> Cf. Law 328/2000, art. 22.

<sup>15</sup> Drawn up by the Ministry of Labour, the Ministry of Welfare and the Ministry of Health, November 2006.

<sup>16</sup> Venice, Milan, Turin, Genoa, Bologna, Florence, Rome, Naples, Bari, Brindisi, Taranto, Reggio Calabria, Catania, Palermo and Cagliari (ex Art. 1 Law 285/1997, paragraph 2).

<sup>17</sup> *Le esperienze regionali per la conoscenza dell'infanzia e dell'adolescenza*. Ed. by Valerio Belotti in *Prospettive Sociali e Sanitarie* No. 20/2008.

the problem in such a way as to "provide assistance to these children at an early age and continue to provide them with a range of services throughout their lives". Such an approach must be based on a model that can be used throughout the country.

➤ **The Italian Government should** use efficient and agreed upon methodologies and tools, also at a regional level, so as to have reliable, up-to-date data on the different types of disabilities that occur during developmental age and also on the socio-demographic variables associated with these disabilities.

### **Discrimination against children belonging to minorities**

The difficult social situation of young Roma, Sinti and Camminanti children still persists whether they are of Italian or foreign nationality. This situation was highlighted by the UN Committee on the Rights of the Child in its Concluding Observations on Italy in 2003, above all in the areas of health, social assistance, education and housing. Episodes of racism continue to occur against the Roma, something about which the UN Committee had already expressed its concern. Italy is noted for the so-called "nomad camps", areas that are physically separated from a town or city and the life of its inhabitants. These camps contribute towards the social and geographical segregation of these communities. There is a tendency to force Roma and Sinti families to move from the camps in which they live without warning and without giving them the possibility to appeal.<sup>18</sup> The ways in which these camps have been cleared have resulted not just in the violation of the rights of the adults, but also of the children. The situation of Roma and Sinti communities, who have not yet been recognised as national minorities, is tackled using *exceptional* measures. In particular, in 2008, the Government declared a state of emergency<sup>19</sup> "relating to the camps of nomad communities in Campania, Lazio and Lombardy" and ordered a census of the Roma and Sinti communities living in these camps.<sup>20</sup> It is considered that these measures violated the rights of the Roma and Sinti populations, above all of the children, not just because of the way in which they were carried out, but also because of the aim of these operations.<sup>21</sup> Although formally the aim was "to guarantee the respect of the fundamental rights and dignity of the people", they were, in fact, measures to protect public order as these camps allegedly "gave rise to a situation of great social alarm".<sup>22</sup> The lack of suitable planning of policies to promote and safeguard the rights of the Roma and Sinti, of both Italian and foreign nationality, can also be seen in the failure to allocate funds on a regular basis in order to adopt measures aimed at favouring their integration, such as cultural mediation in schools using suitably trained mediators.

➤ **The Italian Government should** recognise the Roma, Sinti and Camminanti as national minorities and introduce policies for social inclusion and the safeguarding of the

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<sup>18</sup> Report on the Italian situation submitted to CERD, 2008.

<sup>19</sup> D.P.C.M. of 21 May 2008, which contained "state of emergency relating to the camps of nomad communities in Campania, Lazio and Lombardy".

<sup>20</sup> Campania Order No. 3673/2008; Lazio Order No. 3676/2008; Lombardy Order No. 3677/2008.

<sup>21</sup> The registration of these people consisted in their photographs and fingerprints being taken, also of the children, and this was done with no respect for their privacy (unlike what happens in censuses carried out on the rest of the population) and above all without any recognition of the Roma and Sinti populations as a national minority.

<sup>22</sup> While it was stated in these orders that the measures were being taken in order to "guarantee the respect of the fundamental rights and dignity of the people, by ensuring their identification, in order to apply existing measures of a humanitarian nature and those relating to immigration, as well as to enable access to essential social, welfare and health services, and also to protect children from individuals or organised crime who use the uncertainty concerning these children's identity or origin to carry out illegal activities and serious forms of exploitation", this order also introduced a measure (DPCM of 21 May 2008) declaring a state of emergency "because of the presence of numerous illegal non-EU citizens and nomads who have settled in urban areas" and that "these camps, because of the conditions that exist there, have given rise to a situation of great alarm with possible serious repercussions in terms of public order and security for the local population".

children's rights. This includes the elimination of nomad camps, the promotion of schooling and the provision of access to health and social services.

## **2. Administration of justice and the rule of law**

### **Juvenile prisoners**

The Italian system of juvenile criminal justice does not comply fully with certain provisions of the CRC, the Beijing Rules for the Administration of Juvenile Justice and the European Convention of Strasburg on the Exercise of Children's Rights.<sup>23</sup> In particular, too many children are sent to juvenile correctional institutions (IPM), while there is an under-use of the other measures offered by the juvenile justice system.<sup>24</sup> Moreover, juveniles held in pre-trial custody are often held for longer than the final sentence that is imposed on them. At the end of 2008, of 470 juveniles in the IPM, 147 had received a final sentence, 5 were waiting for the decision of the Court of Cassation, 66 were on appeal and 252 were still awaiting the decision of the first court of instance<sup>25</sup>. Of the 1,347 juveniles who entered the IPM in the whole of 2008, 439 were being held in pre-trial custody, 533 arrived from Initial Reception Centres (CPA) and only 73 had previously been free and had been sent to serve their sentences<sup>26</sup>. Moreover, as many as 61 of these juveniles had been transferred from other institutions, which shows that juveniles, mainly foreign, are often moved from one IPM to another for disciplinary or administrative reasons (such as overcrowding)<sup>27</sup>. The transferring of juveniles from one institution to another interrupts their education and destroys social, family and employment ties. In addition, the system of communities for children appears inadequate as these communities have few resources and lack the necessary specialisation.

Three social groups are over-represented in the IPM: migrant children, many of whom are unaccompanied minors<sup>28</sup>, the Roma and Sinti, and Italians from the deprived areas of southern Italy. The majority of juveniles held in the IPM in the south of the country come from deprived areas of southern cities in which there is a high level of unemployment and where organised crime is rife<sup>29</sup>.

➤ **The Italian government should** allocate greater financial resources and better trained human resources to the juvenile criminal justice system, the social services and the communities, as well as adopting specific *policies* and action programmes aimed at correcting the over-representation of foreign minors, the Roma and southern Italians in the IPM.

## **3. Right to social security and to an adequate standard of living**

### **Poor children**

There are 1,728,000 children in relative poverty in Italy, around 23% of the poor population (despite the fact that they make up just 18% of the total population), with a large proportion of these children, 61.2%, aged less than 11. There is a large geographical imbalance, with 72% of poor Italian children living in the south.<sup>30</sup> Two thirds of poor families in Italy live in the south (65%, even though only 32% of the total number of families live there), and the level of "intensity" of poverty is much higher than in the rest of Italy. In the south of Italy, more than a third of numerous families are poor (37.5% of families with five or more members); and one out of every two families with three or more children are poor (48.9%). Italy is characterised

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<sup>23</sup> Art. 2, 3, 6, 12, 37, 40 CRC; Art. 1, 10 Beijing Rules; Art. 3-6 of the European Convention.

<sup>24</sup> DPR 448/1988.

<sup>25</sup> [http://www.giustiziaminorile.it/statistica/dati\\_statistici/2008/IPM\\_2008.pdf](http://www.giustiziaminorile.it/statistica/dati_statistici/2008/IPM_2008.pdf)

<sup>26</sup> *Ibid.*

<sup>27</sup> Cf., respectively, Belotti V., Maurizio R., Moro A.C., *Minori stranieri in carcere*, Guerini e associati, Milan 2006; Campesi G., Re L., Torrente G., ed, *op. cit.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Cf. Cavallo M., *Ragazzi senza*, Mondadori, Milan 2002.

<sup>30</sup> Cr. Istat, *La povertà relativa in Italia 2007*.

by a high level of inequality and this problem needs to be addressed by means of a series of policies aimed at combating child poverty. These policies should combine job creation schemes, income support and various social services, and should also be made a priority in the National Plan for Childhood.

➤ **The Italian Government should** identify minimum standards at a national level in order to reduce child poverty and introduce a system to monitor the achievement of these standards. It should also promote legislation and social expenditure that continues over time and are not merely one-off measures. These should be part of a global project focusing on children (and their nuclear families).

#### **4. Right to education**

##### **Immigrant children and education**

On 14 October 2008, the Chamber of Deputies passed a motion asking the Government to review the system governing the access of foreign students to all levels and types of schooling and to introduce "inclusion classes".<sup>31</sup> There is concern as to the contents of this motion. It is necessary to guarantee a suitable integration of foreign children in the classroom from the very beginning of the school year if possible and this integration should be pursued at all times. It should include intensive courses to learn the Italian language taught by specialised teachers and/or cultural mediators, and not involve the placing of foreign children in "inclusion classes". Another critical point is the high concentration of foreign students in classes in certain geographical areas and in certain types of schools.

➤ **The Italian government should** guarantee and safeguard intercultural values in the learning process.

##### **Pupils with disabilities**

There were 192,873 children with disabilities enrolled in schools during the 2008/2009 school year. The education of young children and adolescents must be centred around an inclusive model, aimed at aiding "*the development of the children's personality, as well as the development of their capabilities and their mental and physical skills, in order to enable them to realize their full potential*",<sup>32</sup> also in the case of young children and adolescents with disabilities. In practice there are teachers who are not trained to do this and have problems in dealing with classes in which there are disabled students. The process of inclusion tends to be entrusted to support teachers rather than involving curricular teachers and other staff, such as assistants for independence, communication and personal hygiene, and specially trained staff responsible for motor education. As a result, guided visits, educational trips, and recreational and cultural activities can "paradoxically" become situations of marginalisation, in particular for students with severe disabilities.

➤ **The Italian Government should** introduce specialised educational approaches, starting from curricular teachers and all the other subjects who for whatever reason are involved (assistants for independence, communication and personal hygiene, and specially trained staff responsible for motor education).

#### **5. Migrants, refugees and asylum-seekers**

Special attention needs to be paid to the situation of unaccompanied foreign minors, migrant minors in nuclear families not legally resident in Italy and minors seeking asylum, and to the

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<sup>31</sup> Mozione 1-00033, the text of which is available on the website [www.camera.it](http://www.camera.it). Cf. Ambrosini M., *Classi ponte? Un'invenzione italiana*, 28/10/2008, [www.lavoce.info](http://www.lavoce.info)

<sup>32</sup> See art. 28 and 29 CRC and the UN Committee on the Rights of the Child, General Comment No. 1 *The aims of education* 2001.

treatment of migrant minors at the Italian border, above all in the light of recent changes to the legislation<sup>33</sup> and the introduction of immigration policies by the Italian Government.<sup>34</sup>

### **Treatment at the border of migrant minors**

During the last five years, an increasingly large percentage of migrants arriving in Italy, especially at its southern borders, have been minors, including unaccompanied minors. In 2008, 2,646 minors arrived in Lampedusa, 8.4% of the total of migrants.<sup>35</sup> This figure does not show the whole picture, however, as it does not include those minors who entered Italy illegally at other borders.<sup>36</sup> During the last few months of 2008, unaccompanied minors in the Initial Reception Centre (CPSA) in Lampedusa were held on average for more than 20 days, with some being held for more than a month in violation of Art. 37 of the CRC.<sup>37</sup> This factor, together with the **serious overcrowding** that occurred in the CPSA in 2008,<sup>38</sup> seriously affected the treatment and living standards of minors in the CPSA in violation of Art. 20-25 and 27 of the CRC, and Art. 11 of the ICESCR. Moreover, at the end of 2008, around 200 minors were transferred from Lampedusa to facilities not intended to host minors and since February 2009 boats intercepted off Lampedusa have been forced to land in Sicily, even though the island does not have any facilities equipped to deal with these migrants. Moreover, it lacks the necessary procedures to host, assist and identify large numbers of migrants in an adequate way, above all as regards the most vulnerable groups, including unaccompanied minors.<sup>39</sup> Finally, there is concern over the fact that, as of April 2009, on various occasions at Italy's Mediterranean border, **migrants and asylum seekers have been returned to Libya**.<sup>40</sup> Although the Italian Government has not officially provided any information on the migrants who were returned to Libya, various well-informed sources state that they included minors.<sup>41</sup>

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<sup>33</sup> Law No. 94 of 15 July 2009, which mentions «Measures relating to public security», the so-called Internal Security Law.

<sup>34</sup> The forced return to Libya of migrants and asylum seekers arriving by sea at the southern border.

<sup>35</sup> The overall number of arrivals were 8,800 in 2003, 10,477 in 2004, 15,527 in 2005, 18,047 in 2006, 11,749 in 2007 and 31,250 in 2008. Source: Questura of Agrigento.

<sup>36</sup> According to the data provided by the Ministry of the Interior - Foreign and Border Police Service, around 320 foreign minors arrived in Italy in 2008 through the borders of Bari, Brindisi, Ancona and Venice. It is correct to state that these figures are not complete, however, as they are based on occasional checks carried out on sample groups in order to limit the presence of illegal immigrants arriving in Italy overland.

<sup>37</sup> Save the Children Italy, Assistance and protection for migrant minors arriving by sea, Monitoring Report-Praesidium Project, January 2009, available at the link [www.savethechildren.it/2003/download/pubblicazioni/lampedusa\\_dossier.pdf](http://www.savethechildren.it/2003/download/pubblicazioni/lampedusa_dossier.pdf).

<sup>38</sup> Although the facility has a maximum capacity of 804 places, it has hosted up to 1,800 migrants at the same time. More than 200 unaccompanied migrants have been recorded on different occasions even though there are only 60 places reserved for women and children. Source Save the Children Italy, Assistance and protection for migrant minors arriving by sea, Monitoring Report-Praesidium Project, January 2009, op. cit.

<sup>39</sup> The areas along the Sicilian coastline affected by the landings of migrants are almost exclusively in the provinces of Ragusa, Siracusa and Agrigento, where only Pozzallo (RG) and Porto Empedocle (AG) have any permanent facilities (port hangars) to provide initial assistance to migrants arriving, but these facilities are totally inadequate. Even in such facilities children have been hosted for particularly long periods in anything but suitable conditions.

<sup>40</sup> On 6 May 2009, during a press conference, the Ministry of the Interior announced that three large boats with more than 200 migrants on board had been sent back to Libya, declaring that this marked a "turning point in the fight against illegal immigration. Cf. [www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/2100\\_500\\_ministro/0495\\_2009\\_05\\_07\\_conferenza\\_stampa\\_su\\_rimpatri.html\\_1077840056.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/2100_500_ministro/0495_2009_05_07_conferenza_stampa_su_rimpatri.html_1077840056.html). According to Fortress Europe from 5 May to 30 August 2009 there were 1,286 documented cases of migrants or refugees being turned away from Italy towards Libya, <http://fortresseurope.blogspot.com/2006/01/libia-elenco-dei-respingimenti.html>.

<sup>41</sup> Press conference on 20 July 2009 of the UNHCR; this statement confirms the news provided by Maltese sources on 19 June 2009 and the probable presence of at least six minors on each boat being sent back based on a statistical analysis of the arrivals in 2008. This was noted with concern by Save the Children Italy after the first announcement of the boats being sent back to Libya (press release of 11 May 2009).

These minors were, therefore, allowed to return to a situation that did not guarantee the safeguarding of their rights, endangering their physical and psychological well-being, in violation of the principle of *non refoulement*.<sup>42</sup>

➤ **The Italian government should** stop returning migrants to Libya and go back to a model for handling flows of migrants arriving by sea that is based on assisting, hosting and identifying migrants before transferring them to the relevant local facilities. In this way, the standards and procedures adopted will respect human rights.

### **Minors seeking asylum**

Contrary to Art. 22 of the CRC, Italy has not adopted all the measures necessary to enable refugee minors or minors seeking asylum to benefit from the protection they require in order to be able to enjoy the rights guaranteed in particular by the CRC. At the beginning of 2009 the media carried various stories about how asylum-seeking minors from Afghanistan were being turned away from Italian ports along the Adriatic coast, in particular Ancona, Venice, Bari and Brindisi, and sent towards Greece. This circumstance was also reported by the UNHCR.<sup>43</sup> On 29 April 2009, the European Court of Human Rights declared admissible the 35 complaints lodged by Afghan and Sudanese asylum seekers, who included a number of minors, against the Italian and Greek governments for the violation of their fundamental rights.<sup>44</sup> There are still, however, many critical areas even for those minors who manage to enter Italy as regards access to asylum procedures. In particular, there is the problem of the way in which their age is determined and the difficulty in being hosted in the correct facilities as a result of the small number of places available in the System for the Protection of Asylum Seekers and Refugees (SPRAR).<sup>45</sup>

➤ **The Italian government should** ensure that asylum-seeking minors are allowed into Italy and guaranteed access to asylum procedures.

### **Children in nuclear families not legally resident in Italy**

In addition to the official data regarding the presence of immigrants in Italy, it is necessary to add the "presumably far from irrelevant [number] of immigrants who are illegally present, but whose number, because of the very nature of this phenomenon, cannot be monitored or statistically quantified".<sup>46</sup> There is a very great risk that the children in this group suffer a violation of their fundamental human rights, not only because of legislative shortcomings, but also because of a number of obvious obstacles that prevent them from enjoying these rights. Although Italian law forbids the expulsion of minors, sometimes, in respect of their right not to be separated from their families (Art. 9 of the CRC), they are sent away with parents who are not legally resident in Italy, or are held together with their parents in Centres for Identification and Expulsion (CIE), in violation of Art. 37 of the CRC.

Access to health, social and school services is greatly restricted for these minors and they do not enjoy the same level of services as Italian children.<sup>47</sup> Law 94/2009, the so-called "Internal

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<sup>42</sup> Art. 33 of the Geneva Convention (1951); General Comment No. 6 of the CRC Committee (2005).

<sup>43</sup> UNHCR, Unaccompanied minors seeking asylum in Greece, available at the page [www.unhcr.org/refworld/category\\_REFERENCE/GRC/48abd557d,0.html](http://www.unhcr.org/refworld/category_REFERENCE/GRC/48abd557d,0.html).

<sup>44</sup> News provided by Fortress Europe <http://fortresseurope.blogspot.com/2006/01/speranza-patrasso-la-corte-europea.html>. On the website of the European Court of Human Rights it was stated that the case was "communicated" to the Italian Government on 23 June 2009.

<sup>45</sup> For the two-year period 2009-2010 there are only 501 places intended in general for the more vulnerable categories, including (but not exclusively) unaccompanied minors.

<sup>46</sup> The third and fourth reports of the Italian Government to the UN Committee on the Rights of the Child, p. 15.

<sup>47</sup> The Law on Immigration allows for children who are illegally residing in Italy together with their nuclear family to receive essential and urgent treatment, even for a continuous period of time, but it does not allow them to enrol in the National Health System. As a result, they do not have access to paediatricians. The law also states

Security Law", which makes it a crime to enter Italy and stay in the country illegally, has presumably increased the danger that parents who are not legally resident here will avoid using public structures for fear of being identified as illegal immigrants and being reported to the authorities. It should be pointed out, however, that the medical staff are forbidden from reporting that people they are treating are not legally resident and that it is not necessary to show a residence permit when enrolling in a school during the period of compulsory schooling. This law also forbids people who are not in possession of a residence permit from marrying in violation also of the right of foreign children, and also of Italian children born to a parent who is not legally resident in the country, not to be separated from their families (Art. 9 of the CRC).

➤ **The Italian government should** ban the holding of nuclear families with minors in Centres for Identification and Expulsion and other Centres for holding migrants. It should also adopt measures aimed at removing all major obstacles that children living with families without a residence permit face with regard to their fundamental rights. These rights are recognised by the Italian Constitution and the CRC (such as the right to health, education, acceptable living conditions and the right not to be separated from one's family). In particular, it should guarantee the right of all children to enrol in the National Health System.

### **Unaccompanied foreign minors**

There remain critical points in relation to the protection of the rights of unaccompanied foreign minors. Firstly, **the assessment of a child's age** is considered as a prerequisite in order for them to have access to the system of protection and care provided for by Italian law. Where there are no documents proving a child's age, the child may be incorrectly identified as an adult, which can result in measures being taken that violate her/his rights, such as being expelled or being held in Centres for Identification and Expulsion or holding Centres for adults. The frequent lack of any indication as to the margin for error in the medical report containing the result of the wrist x-ray (the main method used to determine a person's age, rather than what should preferably be a multidisciplinary approach) means that the principle of the benefit of the doubt is not applied, despite the fact that this is a basic principle of national and international law.<sup>48</sup>

As for **the appointment of tutors and the issuing and renewal of residence permits**, there are many differences not just between Regions, but also within the same Region. In particular, with the entry into force of Law 94/2009, immigrants who arrived in Italy when they were minors and who were not placed in an integration projects for at least two years<sup>49</sup> are not entitled to have their residence permits renewed when they become adults. Finally, **repatriation** orders are issued by an administrative body (the Committee for Foreign Minors in the Ministry of Labour, Health and Social Policies) instead of by a jurisdictional body. Law 94/2009 also includes a specific measure for the repatriation of children involved in prostitution from EU countries.

➤ **The Italian Parliament should** introduce legislation for unaccompanied foreign minors which adequately safeguards their rights, in particular with regard to their age assessment, the renewal of their residence permits when they become adults and assisted repatriation.

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that not having a residence permit and therefore the impossibility to obtain residency means that these children are not entitled to any benefits provided by the local authorities.

<sup>48</sup> The principle of the benefit of the doubt in favour of a child, referred to by the UN Committee on the Rights of the Child in its General Comment No. 6 of 3 June 2005, is clearly expressed by Art. 19 of D.lgs 25/2008 concerning unaccompanied minors seeking asylum; this principle is also contained in Art. 8 DPR 448/88 and it was implemented in the Ministry of the Interior's circular Prot. 17272/7 of 9 July 2007, regarding the identification of unaccompanied migrants.

<sup>49</sup> Art. 1 paragraph 22 lett. v) Law 94/2009 modifying paragraph 1 bis of Art. 32 of the Law on Immigration.