



International Covenant on Civil and Political Rights

**Written Submission to the Human Rights Committee for the 119th Session in
relation to the sixth periodic report of Italy**

**by the Italian Disability Forum
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Introduction

By presenting this written submission, the Italian Disability Forum (hereinafter: “FID”) is providing the Human Rights Committee with information on Italy in relation to the consideration of the report submitted by the State.

FID, which is submitting this document, has always been active over the years to monitor the implementation of policies and programs aiming at the promotion of the rights of persons with disabilities, working in the wider framework of Human Rights, in which also the United Nations Convention on the Rights of Persons with Disabilities (CRPD) has its principles rooted.

The ratification of the CRPD by Italy has triggered the long awaited process of the inclusion of disability in the human rights system, however the data collected by the civil society show that the cultural change underlying this new approach is yet to be consolidated in our country. Issues related to the rights of persons with disabilities still cover a marginal position in the political, social and cultural agendas, especially when applied to national and local administrative policies.

For this reason, and also in order to encourage our country to meet the ICCPR requirements, we submit this document to you, Chairperson, and to all the Committee members in order to support the examination and monitoring activity of the Italian country report.

This document contains our observations on some specific issues that we believe are important to be evaluated, also because they are missing in the Italian Report to this Committee.

Through this written submission we wish to suggest elements for the analysis and the evaluation of the policies for the promotion of human rights from a disability perspective, and at the same time, to suggest a more in-depth analysis of some key issues of pivotal importance for persons with disabilities.

Also the suggested questions and recommendations included at the end of each paragraph, for Committee members to ask during the constructive dialogue, aim at strengthening the work the Committee is called to do in encouraging the State Party to implement the Covenant.

About the authors

The **Italian Disability Forum (Forum Italiano sulla Disabilità - FID)** is an Italian not-for-profit DPO, full member of the European Disability Forum (EDF), representing the interests of persons with disabilities in Italy. It is composed exclusively of national organizations of persons with disabilities and their families. Its aims are to fight for the recognition, promotion and protection of the human rights of persons with disabilities, as well as for non-discrimination and equal opportunities.

Since its establishment, the Italian Disability Forum has participated in all initiatives and activities carried out by EDF.

Article 2 Constitutional and legal framework within which the Covenant is implemented

Although disability is not explicitly listed as a prohibited ground of discrimination under Article 2, it is adequately covered by the reference to “other status”.

National Human Rights Institution - NHRI

Italy is one of the few States¹ in Europe without a National Human Rights Institution in line with the Paris Principles, the UN General Assembly 48/134, 20 December 1993 and Council of Europe Resolution 97, 30 September 1997.

So we think that the establishment of a national human rights institution in line with the Paris Principles is necessary and very welcome. **Two draft bills on the Establishment of a National Human Rights Institution** have been waiting to be discussed and adopted by the Parliament for several years.

We also believe that this is of particular importance in this context as, despite the many attempts, it is yet to be done in Italy. Many of the draft laws produced since 2011 do not take into account the Paris Principles and while the Parliament is engaged in producing a new text, the only human rights protection mechanisms active in Italy are represented by the National Office Against Racism (UNAR-Ufficio Nazionale Antidiscriminazioni Razziali)², established by Legislative Decree 215/2003 and the Inter-ministerial Committee for Human Rights (CIDU – Comitato Interministeriale per i Diritti Umani), which are both governmental bodies and do not have the capacity to provide legally binding remedies.

Mechanism to address discrimination

Mechanisms to address discrimination of persons with disabilities as well as multiple and intersectional discrimination are lacking, including effective sanctions and remedies.

The anti-discrimination actions put in place by the Italian governments by establishing the UNAR and OSCAD (Observatory for the protection against discriminatory actions) **do not have a specific mandate to address multiple discrimination, and that no sanction or remedies targeting multiple or intersecting forms of discrimination are foreseen in the Italian legislation.** This means that a person subjected to multiple discrimination need to choose the ground of discrimination to complain about.

¹ <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Europe.aspx>

² UNAR has been set up following the European Directive 2000/43/ EC on race and ethnicity, which is described in the Report of the Italian Parliament as “equality body” (2013): <http://www.unar.it/unar/portal/wp-content/uploads/2014/01/Relazione-al-Parlamento-2013.pdf>

As previously said, in Italy an independent **Human Rights Institution**, representing or participating in the discrimination monitoring mechanisms, **has not been established**. The existing Human rights institution has a very limited scope of prevention of abuses and torture in prisons. A law proposal for the establishment of a national Commission for the promotion and protection of human rights enshrined in the national Constitution and in the international Conventions has never been discussed in the Parliament. Moreover, **the National Observatory³** on the promotion and protection of the rights of persons with disabilities **cannot perform the function of “protecting” the rights of persons with disabilities, to receive complaints and undertake actions towards defaulting institutions.**

Develop the possibility of judicial remedy

As noted by the CRPD Committee in its Concluding Observations (CRPD/C/ITA/CO/1), Italy fails to provide necessary disability-specific training to all departments including judicial administration and to ensure persons with disabilities have information on lodging complaints and seeking remedies.

Suggested question:

- *Please provide information on when the State party is planning to establish an independent Human Rights Institute with a broad scope, including the monitoring of the rights of persons with disabilities;*
- *What kind of positive action are being taken to combat discrimination on the basis of disability and multiple ad intersectional discrimination? What kind of indicators ad data collection system are being used to monitor the phenomenon of multiple and intersectional discrimination?*
- *What steps will the government take to ensure that professionals at all levels of Government, in particular those of judicial administration, develop more knowledge and expertise on civil and political rights, including of persons with disabilities?*

Suggested Recommendations:

- *Take steps to establish a National Human Rights Institution which respects the Paris Principles.*

Article 3: Equal treatment of women and men

Gender and disability are two dimensions that are hardly ever connected in today's policy making. Gender, which represents, in one way or another, the fundamental element of cultures and societies, is hidden in the world of disability. Beyond all doubt, its concealment is at the base of the violations of the human rights of the individual who is female and is a person with disability.

³ CRPS Italy's Witten replies to LoI n. 11 – 12 - 14

The double discrimination suffered by disabled women, being female and disabled, is evident but difficult to reveal because these women don't have the right words to express themselves or to denounce the fact.

Legislation in favor of women

In Italy, none of the laws in favor of women refer to specifically to women and girls with disabilities. The absence of explicitly references to the specific problems in the measures adopted in the policies and actions in favor of women, the absence of mechanism for analysis and proof of application of the laws in favor of women and the lack of data and statistics makes it impossible to analyze the level of discrimination faced by girls and women with disabilities, their participation in the social life and the equal opportunities in daily life.

Also the Councillor for Equality⁴ is not able to provide data regarding the efficacy and efficiency of actions run by itself. In this regard it is unknown the real effects of the rules on the enjoyment of rights by women with disabilities.

Actions against discrimination, stereotypes, hate-speech and violence

All the campaigns run by the Government against discrimination and or stereotypes never specifically refer to women and girls with disabilities.

If disability is a theme of a campaign its actions are usually devoted to "persons with disabilities" without any reference to women with disabilities: women are hidden in the disability dimension and their role in the society isn't recognized at all.

The awareness raising campaigns implemented in 2010 -2011 by the Equal Opportunities departments have been inadequate and ineffective in raising awareness on the CRPD rights-based approach towards the media and general population. Indeed, denigrator campaigns towards persons with disabilities strictly linked the financial restrictions imposed to citizen by the austerity measures to the waste of money to support "unproductive persons"⁵. In any case no campaigns specifically addressing the situation of and the double discrimination suffered by girls and women with disabilities.

Suggested questions:

- *What specific measures will the government implement so that the general public will evaluate women on the basis of their skills and the effect of stereotypes will be counteracted?*

Equal access to the labour market

It is important to underline that also in the context of employment women with disabilities face a double discrimination.

⁴ Italy's Written Replies to LoIs n 15

⁵ In 2011 an article was published on the popular weekly publication "Panorama with the title "Cadgers, inexistent disabilities, false certifications, gifted benefits. Here are the coons (and their accomplices) who cheat the INPS .At our own expenses". The cover, entitled «Cadgers of Italy», representing Pinocchio, the liar character of very popular bestseller, on a wheel chair, has irreparably harmed the perception of persons with disabilities.

<http://archivio.panorama.it/italia/Gli-scrocconi-d-Italia-La-guerra-ai-falsi-invalidi>

The ISTAT National Institute for Statistics (*Persons aged 15 years and over by presence of disability and self-declared employment status (per 100 persons with the same characteristics) by gender*), reported a 2013 data indicating among males (15-44 of age) without disabilities an occupancy rate of 62,7% and among male with disabilities an occupancy rate of 24,8%; while among males (45-64) without disabilities an occupancy rate of 71,2% and 23% among males with disabilities.

In regard to women (15-44 of age) without disabilities the survey reported an occupancy rate of 46,3% and in regard to women with disabilities a rate of 20,4%. For women (45-64) without disabilities an occupancy rate of 46,7% while for women with disabilities a rate of 14% .

Suggested question:

- *What measures will the government take to effectively combat discrimination of women with disabilities in employment and in the labour market?*

Wellbeing and health of women with disabilities

Women and girls with disabilities must face many barriers when they need medical care. Very often their needs and specific problems, as for example maternity and gynecology, are not inserted in the ordinary care programs. Moreover, we have no information whatsoever about informative campaigns on sexuality, birth control, prevention of sexually transmitted diseases, breast or uterus cancer organized for them. Neither do we have any information, except for some informative campaigns organized by associations of people with disabilities, whether official health campaigns have given special attention to other forms of communication as sign language, Braille, etc., or information campaigns that use a language suitable for women with learning difficulties or mental disabilities.

Suggested question:

- *What measures will the government take to combat unequal access to health care for girls and women with disabilities?*

Violence against girls and women with disabilities

Despite the fact that **women with disabilities are more exposed to violence of sexual, physical and psychological nature there is no reference to them in the Law n°66 of 15th February 1996 “Rules against sexual violence” , but only a general aggravation of punishment for the violence committed against persons with disabilities regardless of gender.** We can hypothesize that **the lack of legislative reference is at the basis of a complete absence of information regarding violence and abuses suffered by girls and women with disabilities in Italy.**

There is no information regarding girls and women with disabilities in the last report “Violence and maltreatment against women” commissioned by the Ministry for Rights and Equal Opportunities and carried out by the National Statistics Institute (ISTAT), based on the results of a study on the safety of women, carried out from

January till October 2007. The same absence in the investigation “Harassment and sexual harassment” made by ISTAT carried out from 2008 and 2009⁶.

The indifference and lack of attention on the part of the Italian authorities is demonstrated once more by the complete absence of references to girls and women with disabilities in the "Extraordinary Action Plan against sexual violence and gender" Prime Ministerial Decree of 7 July 2015.

Girls and women with disabilities are not included in prevention policies and rarely fall in the statistics on violence even though they are perceived as an "easy target" and doubly exposed to the risk of suffering physical and sexual violence than women without disabilities. Further, 39-68% of girls and 16-30% of boys with intellectual disabilities will be sexually abused before their eighteenth birthday.⁷

The risk of being subject to violence or abuse is real for persons, especially women, with psychosocial or intellectual disabilities and living in institutions: having dependence on others exposes them to the risk of violence and even when they manage to survive violence, they cannot find the protection services suitable for them. Professionals of counseling and emergency services in this area are often unaware of the risks that girls and women with disabilities run because they do not know their condition or because they do not recognize the abuse as violent and associated with the disability.

Suggested questions:

- *What does the government intend to do to ensure that the police is able to perform a proper assessment of the risks of violence against persons with disabilities and particularly against girls and women with disabilities?*
- *What does the government intend to do to ensure that all victims of violence against girls and women with disabilities have access to high-quality protection and support services and specialist aid at the local level without delay?*

Being mother or sister of persons with disabilities

Disability is still an invisible matter in the institutional agenda while problems impact dramatically on families who are often left alone to care for their relatives with disabilities.

A 2011's study⁸ was carried out to focus on the condition of persons with multiple sclerosis and autism entitled "The hidden dimension of disability". It identified the figure of the burden of care of parents, in particular **discrimination by association suffered by mothers and sisters of persons with disabilities**. This research showed a negative impact on the working life of the majority of families involved in the study

⁶ “Violence and abuse against women "commissioned by the Ministry of Rights and Equal Opportunities and conducted between January and October 2007 by "National Institute of Statistics (ISTAT), based on the results of a study on the safety of women and" Harassment and sexual harassment "ISTAT conducted between 2008 and 2009.

⁷Sobsey, 1994, as reported in Reynolds, 1997 cited in Rousso 2000

⁸http://www.censis.it/5?shadow_evento=117959 Censis for the Cesare Serono Foundation

and especially that mothers experience more deterioration of their career (62.6% of cases) as compared to fathers (25.5% of cases).

There is also a demographic, social and economic phenomenon reporting a "*... growing difficulties facing by women to support the burden of a nursing job that interests more phases of their life*". The mutual support between generations of mothers and daughters has become more and more heavy, leading to strategies for gradually adjusting the informal network when emerging new needs. The health and disability conditions are surely two critical issues that contribute to complicate the picture since described here and definitely put in crisis a welfare model that relies on the mutual help between generations of mothers and daughters.⁹

Suggested questions:

- *How is Italy monitoring the effect of the law provisions for women also for women with disability in terms of protection?*
- *How are Authorities gathering information and addressing the phenomenon of violence against girls and women with disability? What cultural and technical instruments are being utilized to detect violence on persons with disabilities and in particular on girls and women with disabilities?*
- *What steps are being taken to monitor and address the negative effect on the families, in particular on the mothers and sisters, of the lack of support available for the care of their members with disabilities?*

Suggested Recommendations:

- *To mainstream gender in disability policies and to mainstream disability in gender policies, both in close consultation with women and girls with disabilities and their representative organizations.*
- *To take measures to increase programs for women and girls with disabilities in the areas of education and employment in order to enhance their inclusion and to create equal opportunities for their participation*

Article 10: Adequate treatment in detention

The Italian legislation provides some normative references that indirectly protect person with disabilities in prison¹⁰.

Convicted persons with disabilities

Crime perpetrators with disabilities, including with intellectual or psychosocial disabilities, are mainly locked in prisons which are not adequate to their conditions, thus receiving an inhuman treatment. The Italian Law 354/75, art. 65, establishes that detainees who need appropriate healthcare intervention because of infirmities or physical handicaps cannot be convicted in ordinary prisons. According to the law, they must be consigned to special adapted prisons or compartments to meet their

⁹Rapporto annuale ISTAT 2014 – nuove sfide per il sistema di welfare

¹⁰ Italy's CRPD First Report, paragraph 39 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/044/22/PDF/G1504422.pdf?OpenElement>

health needs. As a consequence, because of this mere medical approach, some disability conditions are not recognised as such. As a consequence, persons whose disability conditions are not recognised do not have access to appropriate programmes and support.

Detention in the context of immigration

The immigrants with disabilities during the permanence in Italy not receive an appropriate support in health care and social services, a part of them being minors. Frequently the center of admission (and hot spots) are inaccessible for person with disabilities and not are available appropriate support (interpreter for deaf people, accessible toilets, etc.).

Suggested questions:

- *Please explain how and when the State party is planning to reform the national legislation to ensure that detainees with disabilities are ensured the support they need in prison.*
- *Which measures will the Government take to provide accessibility and appropriate support for immigrants with disabilities hosted in preliminary reception centers?*

Suggested Recommendations:

- *To provide reasonable accommodation to prisoners with disabilities to ensure their participation and access to all services and activities, on an equal basis with others, within prisons or other centers of detention.*
- *To enable all persons with disabilities arriving in the State party to access facilities on an equal basis with others, and to ensure that those with psychosocial disabilities are given appropriate support and rehabilitation through strengthened systems.*

Article 12: Freedom to choose residence

Italy does not yet offer on its national territory and in a homogeneous way, throughout the regions, appropriate support for guaranteeing persons with disabilities, the “*possibility to choose, on an equal basis with others, their own residence and where and with who to live and not obliged to live in a particular accommodation*”¹¹.

People living in residential institutions

In Italy there is a consolidated tradition of recovering adults with disabilities who do not have family support in segregating institutions which are managed mainly by religious bodies. The alternatives to residential solutions (small group homes, supported living units, support measures at home, etc.) are still very few and mainly reserved to persons with slight disabilities.¹² 3,4% only of people living in

¹¹ CRPD’ article 19

¹²Beadle-Brown J and Kozma A (2007): De-institutionalization and community living – outcomes and costs DECLOC): report of a European Study. Volume 3: Country Reports. Canterbury: Tizard Centre, University of Kent.

residential facilities have access to small family type communities or to community housing. More than 90% live in institutions¹³. In 2011 the residential places in Italy were 386.803, of which 88% in facilities hosting over 30 people and 95% in facilities hosting over 10 people¹⁴. Despite the ratification of the UN Convention in 2009, the type of services offered in residential facilities in 2011 does not appear substantially changed, whilst the number of places offered has doubled compared to 2007, when the total number of places in residential services for persons with disabilities were 178.830. In 2007, 85% (153.798) residential places were available in facilities hosting over 30 people, over 92% (165.832) in facilities hosting over 20 people. Institutionalized persons with disabilities were about 370 thousand in 2013 (0,6% of the Italian population)¹⁵, a substantially unaltered rate compared to 2011.

Suggested questions:

- *Please explain when and how the State party is planning to undertake a de-institutionalization process by providing, in a reasonable length of time, a range of living arrangements in the community with the necessary individual support to persons with disabilities of any age and intensity of needed support?*

The mandate of the national preventative mechanism (NPM), which has been set-up following the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, does not extend to residential facilities for persons with disabilities where they are deprived of their liberty. The UN Committee on the Convention on the Rights of persons with Disabilities (CRPD) expressed its concern on that, and recommended the NPM “ *to immediately visit and report on the situation in residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities* ”¹⁶

Suggested question:

- *Please indicate a timeframe to include within the mandate of the national preventative mechanism visits to psychiatric institutions and other residential facilities for persons with disabilities, particularly persons with intellectual or psychosocial disabilities.*

Suggested Recommendations:

- *To ensure the implementation and the strengthening of the de-institutionalization process of persons with disabilities, the provision of support services to allow persons with disabilities to live in the community.*
- *For the NPM to immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities.*

¹³ISTAT 2013. I presidi residenziali socio-assistenziali e socio-sanitari, Gli interventi e i servizi sociali dei comuni.

¹⁴Ibidem.

¹⁵Rapporto Osserva salute - Stato di salute e qualità dell'assistenza nelle regioni italiane 2014. Salute e disabilità.

¹⁶CRPD Committee LoIs n.16 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/088/72/PDF/G1608872.pdf?OpenElement>

Article 14: Right to a fair trial

Even if the Italian legislation is quite advanced in various field, access to justice for persons with disabilities is not adequately supported during the procedures and no particular attention is provided to guarantee equal opportunities during the course of a judgement. Often Courts locations are not accessible. Particular discrimination is suffered by persons with sensory disabilities by the procedural code in civil and penal field¹⁷ (see following section). One of the relevant initial problems relative to the access to justice is of a structural kind, that is the serious difficulty of persons with disabilities to move around autonomously and independently in an Italian Law Court. The majority of Law Courts are inaccessible for persons with physical disabilities due to the non-existence of ramps and accessible lifts/elevators, tactile paving for blind persons that allow them to enter the courtroom autonomously, are not foreseen and in general potential screens or indications for the identification of the courtrooms in which the hearings of the day are located, lack audio.

Legal assistance in civil and criminal procedure

In the CRPD National report the same State highlights a problem in the access to justice for blind and deaf people, despite the judgment of the Constitutional Court 341/99¹⁸ that declares, art. 119 of the code of criminal procedure¹⁹, unconstitutional. In particular, the provisions of the code of civil procedure (art. 124) are different from those of the code of criminal procedure and deaf and blind people do not have the guarantee of receiving the documents and records of the hearings in the appropriate format, as well as being assisted in discussion hearings.

There is no ad hoc legislation that foresees transcription in Braille of legal documents on request of one of the parties, creating a series of violations of the art. 3, 24 e 111 of the Italian Constitution and of art. 13 of the CRPD UN Convention.

Although article 124 of the Civil Procedure Code provides for deaf persons to be heard by written reply or using an interpreter at the discretion of the court, there is no monitoring system or data available on its actual implementation.

Since 2014 the Ministry of Justice has introduced the on-line civil trial and administrative trial, in the framework of the implementation of a set of measures aimed at digitalizing most public services.

This set of measures does not include accessibility standards for websites, even though all public websites should be accessible according to Law 4/2004. It does not foresee access to the documentation of the relevant courts. There are documents in

¹⁷ The use of Braille in Courts: The anomaly relative to an investigated/indicted blind person was revealed in a case instituted by his blind lawyer in front of the first penal session of the Court of Torre Annunziata in which the bench rejected, with an injunction of May 2014, the invalidity of the judicial documents not transcribed in Braille and he did not even accept the issue of constitutional legitimacy of the articles of the code of penal procedure that does not foresee the invalidity of this, in contrast with art. 3, 24 and 111 of the Constitution.

¹⁸ <http://www.giurcost.org/decisioni/1999/0341s-99.html>

¹⁹ See also artt. 141-143 del Codice di Procedura Penale

<http://www.altalex.com/documents/news/2010/09/21/documentazione-degli-atti> and

<http://www.altalex.com/documents/news/2014/03/19/traduzione-degli-atti>

PDF format available, but they are not accessible. Both the on-line civil trial (PCT) and the on-line administrative trial (PAT)²⁰ are not accessible for blind lawyers. The digitization of court archives, funded by the European Union, does not comply with the international accessibility standards.

Suggested questions:

- *What measures have been put in place to provide procedural accommodations in the justice system, including provision of professional sign language interpretation and information in easy to read and Braille formats?*
- *What measures have been put in place to accelerate the accessibility of Italian Law Courts?*

Suggested Recommendations:

- *To provide full procedural accommodations including professional sign language interpretation, and information in easy-to-read and Braille formats.*

Article 16: Person before the law

Notwithstanding the adoption of Law 6/2004 introducing the legal institution of the Support Administration, national legislation still allows the withdrawal of legal capacity on the basis of inability of sound mind.

The Italian legislation on legal capacity therefore is based on a double track: the support administration and the persistence of the interdiction and incapacitation which can apply to persons in the event of inability of sound mind. Both the legal institutions of interdiction/incapacitation, that are still in force, and the current legal institution of Support Administration are based on a concept of protection in the best interest of the person, in contrast with CRPD UN Convention art. 12, which provides for the recognition of full legal capacity of all persons with disabilities without exceptions, as well as for the provision of support to decision making in the respect of the person's will.

Suggested questions:

- *What measures have been put in place to replace the concept of “substituted decision making in the best interest of the person” by the concept of “supported decision making in the respect of the will of the person, however expressed”?*

Suggested Recommendations:

To take measures to reform all laws that allow substituted decision-making by legal guardians, including the mechanism of administrative support and the enactment and implementation of supported decision-making provisions.

²⁰The law of reference are: Codice in materia di protezione dei dati personali (D.Lgs. 196/2003) Codice dell'amministrazione digitale (D.Lgs. 82/2005), DPCM 16.2.2016, n. 40; and the technical rules of informatic documents: on training (DPCM 13 November 2014), on management of protocol (DPCM 3 December 2013) and on archives (DPCM 3 December 2013).

Article 17: Respect of privacy

The privacy of persons with disabilities is not respected in residential facilities. Diffusion in public places or websites of personal data concerning health or disability conditions by public administrations regularly occur, in violation of the privacy protection national norms. **Persons with disabilities who are deprived of legal capacity or deemed incapable of discernment are not entitled to give their consent to processing personal data.**

Suggested questions:

- *How will the government ensure that the privacy of citizens with disabilities is protected when processing personal data?*

Suggested Recommendation:

- *To adopt a piece of legislation specifically protecting persons with disabilities from attacks on their honour and reputation, including the recognition of their consent to personal data processing.*

Article 23: Family, protection and the right to found a family

In Italy no legislation protects persons with disabilities from discriminations in the enjoyment of their right to marry and found a family, in compliance with art. 23 of the UN CRPD.

Prejudices and false beliefs contribute to challenge the right of persons with disabilities to marry and found a family, influence legal decisions against a father or mother with a disability in separation or divorce proceedings and can lead to forced separation of children with disabilities from their families. Very few families of children with disabilities have access to information, services and the support needed to prevent concealment, abandonment, neglect and segregation.

Suggested questions:

- *Please explain which steps the State party is undertaking to provide adequate protection to the right of persons with disabilities to get married and to found a family.*

Suggested Recommendation:

- *To provide adequate legislative protection to the right of persons with disabilities to get married and to found a family.*

Article 24: Protection of children

The Committee on the Rights of the Child's Recommendations and Observations addressed to Italy regarding children and adolescents with disabilities have not been transposed in official government measures²¹.

There is a lack of adequate funding for the implementation of the National Plan for Children, a lack of a national law defining the minimum standards of educational services for early childhood and early diagnosis and intervention, as well as a lack of adequate tools for assessing the quality and efficiency of the staff qualification and the services provided to children with disabilities in education and healthcare services.

Data collection

There is a lack of regular studies and data on children and adolescents with disabilities, who are often overlooked in the statistics both in numbers and with respect to the achievement of their rights. Existing data is not updated, and especially do not allow aggregations or international comparisons, based on indicators and methods of different analysis²².

Also, in Italy there are no reliable official statistics on the number of children with disabilities in the age range 0-5 years.

FID would like to point out an important mapping work done²³ by the Ombudsman for Children and Adolescents which describes and lists the central institutions having legal responsibility for childhood and adolescence. **Fragmentation, invisibility and sustainability:** these are the three key words that sum up the results of the survey and the financial resources allocated to children and adolescents. According to this mapping exercise, it is difficult to understand how the rights of children with disabilities can be adequately addressed.

Suggested questions:

- *Given that many recommendations and observations presented by the CRC Committee have not been implemented by the Government, could you explain what is the main obstacle to their application?*
- *What is the main obstacle to have reliable official statistics on the number of children with disabilities in the age range 0-5 years? What steps are taken to overcome this lack of data?*

Abuse and ill-treatment

The **ill-treatment and abuse of children** in general is a phenomenon that continues to be underestimated and in Italy. There is no national system able to identify child victims of ill-treatment²⁴, its frequency, its epidemiology, the risk factors and its causes as well as a monitoring mechanism. Although a pilot scheme was introduced

²¹Italian NGO Group for the CRC, *The rights of children and adolescents in Italy. 8th update report on the monitoring of the Convention on the Rights of the Child in Italy, year 2014-2015*, pag 117 www.gruppocrc.net

²²<http://www.unicef.it/doc/4824/minori-e-disabilita-la-situazione-in-italia.htm>

²³<http://www.garanteinfanzia.org/news/pubblicato-il-dossier-disordiniamo> pages 18-20

²⁴ The available surveys on www.osservatoriodopedofilia.gov.it are focused on the crimes or on the persons reported and not on the victims.

by the National Childhood and Adolescence Documentation and Analysis Centre²⁵, this scheme has only been adopted by five regions and experimented within just a few small areas. It is a long way from becoming a “national system”. The same goes for the specific area of sexual exploitation, where there is an informative website of the Observatory for the Fight against Pedophilia and Child Pornography²⁶, however its database is still not operational²⁷.

It is important to highlight that the same Observatory confirms that the statistics are based on the detection of the number of crimes committed and of people reported, not the number of children who have been abused.²⁸

Attempts to study the phenomenon have been carried on by the civil society, of course. Studies usually refer to specific geographical areas and assessment methods are usually differentiated, nonetheless, they can provide reliable data to help us estimate the incidence of this phenomenon at national level.

It is alarming to conclude that in those reports (public and private) there is no mention to children (girls and boys) with disabilities.

Suggested questions:

- *How are Authorities gathering information and addressing the phenomenon of the ill-treatment and abuse of children with disabilities?*

The condition of child poverty

The anti-poverty measures, which were included by the Government in the 2016 “Stability Law”, refer to income parameters related to the householder and does not take into account the multiple dimensions of poverty for children, or the specific aspects concerning children with disabilities, and it takes for granted that resources are evenly distributed within the family.

Because in Italy children with disabilities are invisible in statistics (0-5 years) they do not usually benefit from any measures to combat childhood poverty.

To date we do not know how the measures against childhood poverty are being assessed and the effects of these measures on children with disabilities.

Suggested questions:

- *Is there a legal or policy framework (e.g. national strategy) in Italy for tackling child poverty? Is there any evidence or research showing the main causes of child poverty? Is there any monitoring strategy or system to identify the effects of policies fighting child poverty?*

Education and early education

Notwithstanding a legal framework ensuring all pupils and students with disabilities access to mainstream schools and to educational support measures, the qualification of school staff involved in the inclusion of students with disabilities and, as a result, the quality of teaching are often inadequate, resulting in limited access to upper

²⁵<http://www.minori.it/centronazionale>

²⁶<http://www.osservatoriopedofilia.gov.it/>

²⁷http://www.gruppocrc.net/IMG/pdf/2_Rapporto_CRC_2010_StC.pdfenglish abridged version pagg 74-75

²⁸http://www.osservatoriopedofilia.gov.it/dpo/resources/cms/documents/1_rel_parl_pedof_2005_2007.pdf

schools and universities and to vocational training. The outcomes in terms of social inclusion and of inclusion at work in the labor market after schooling are unsatisfying, in particular for persons with learning disabilities and for girls and women with disabilities.

The right of access to mainstream crèches (0-3 years), guaranteed to children with disabilities by Law 104/92, is not enough to guarantee them equal opportunities of development of cognitive, social and communicative. **Early childhood is a crucial period for a child's development**: some 80% of the upper brain functions develop in the first three years of life²⁹. **Some research studies show that the most disadvantaged children are those who mostly benefit of early education programs**³⁰. This underlines that mainstream crèches should not only include all children with disabilities, in compliance with the national legislation, but also create specific educational interventions aimed at developing cognitive, communication and social skills in young children with disabilities³¹.

Suggested questions:

- *Please explain what plans are in place or envisaged in order to adopt indicators to monitor the quality of education and inclusion of students with disabilities in mainstream schools and classes.*
- *Please explain what steps are being taken to initiate and fund systematic measures to ensure access to early education for children with disabilities*

Suggested Recommendations:

- *To establish immediate improvement of data collection to ensure early detection, intervention and service provision for all children with disabilities, particularly for the 0-5 age group.*
- *To ensure that policies aimed at addressing child poverty specifically include children with disabilities through their representative organizations*
- *To take steps to address the heightened risk for women and children with disabilities of becoming victims of violence, abuse, exploitation and harmful practices in the home, institutions and the community, including conducting a detailed survey on victims of violence and systematic data collection in this regard disaggregated by disability and gender amongst other indicators.*

²⁹UNICEF: The state of the world's children 2013. Children with disabilities

³⁰United Nations Educational, Scientific and Cultural Organization, 'Inclusion of Children with Disabilities: The early childhood imperative', UNESCO Policy Brief on Early Childhood No. 46, UNESCO, Paris, April-June 2009, <http://unesdoc.unesco.org/images/0018/001831/183156e.pdf>, 31 January 2013.

³¹ Constitutional Court judgment n. 467 / 2002

Article 25: Political participation, without any distinction, for persons with disabilities

The right to vote

Person with disabilities are entitled to vote. In general the right to vote by persons with disabilities is limited because of architectural barriers in polling stations and polling booths and because the use of alternative forms of communication (Braille, tactile, easy-to-understand information and ballots) is not ensured.

Suggested questions:

- *What actions are planned to facilitate the exercise of voting rights by all persons with disabilities?*

Participation of persons with disabilities through their representative DPOs in the decision making process

In Italy, the process for participation of persons with disabilities through their representative organizations does not meet the requirements of the UN CCPR. **There is not a structured dialogue among DPOs and policy makers, or the obligation to involve DPOs in any legislative or policy decision concerning them in all areas of life.**

Though the leaders of representative DPOs are generally invited to participate in institutional debates, including in the National Observatory on the Condition of Persons with Disabilities, this is not the rule. **Consultation of representative DPOs continues to be an ad hoc, not systematic process and no priority is given to DPOs' advice.**

Finally, we should not forget the consistent number of **persons with intellectual disabilities living in segregating services where they are excluded from any form of participation.**

Suggested questions:

- *Please explain how the inclusion and participation of persons with disabilities through their representative organizations is guaranteed in all decision-making processes that affect their lives.*

Participation of persons with disabilities in Human Rights monitoring in Italy

Human rights monitoring for persons with disabilities in Italy is very limited. The system of monitoring human rights is broadly insufficient.

There are 3 governmental bodies: CIDU³² (Intra-governmental Committee on Human Rights) – Ministry of Foreign Affairs), UNAR³³ (National office against racial discrimination - Presidency of the Council of Ministers – department on Equal

³² CIDU provides for the preparation of all documents related to the UN treaty bodies and to the Council of Europe Human rights treaties (periodical reports, answer concerning individual complains, working documents on Human Rights issues, etc.).

³³ UNAR, established as governmental office on racial discrimination at the Department of Equal Opportunities, has progressively extended its scope to all forms of discrimination, including, recently, disability issues

Opportunities) and the National Equality Advisor³⁴ (Ministry of Labour and Social Policies).

Moreover, Some Independent bodies have been established for the protection of human rights of specific target groups, such as the National Ombudsman for the rights of Prisoners and persons under arrest, which has been created in compliance with the UN Convention against torture or cruel, inhuman or degrading treatment or punishment, the National Authority for children and young people, protecting and promoting the rights of children, the Civic Ombudsmen and the Parliamentary extraordinary committee of the Senate, safeguarding and promoting Human Rights.

None of these bodies or authorities meets level A of the UN Paris Principles, as the three governmental bodies are not independent, while the independent bodies cannot intervene in defense of the rights of the person. Moreover, none of these bodies, governmental or independent, has particular attention and competences on the rights of persons with disabilities or includes DPOs as equal partners.

Suggested questions:

- *What measures are being taken and adopted to ensure that organizations of persons with disabilities are meaningfully involved in the system of human rights monitoring?*

Participation of girls and women with disabilities

As reported in the article 3 paragraph, the double discrimination suffered by disabled girls and women, being female and disabled, is a matter of fact, but difficult to express, because **these girls and women don't have the right words to express themselves or to denounce their condition.**

All parties involved must be aware that **the gender perspective must be adopted explicitly in every country in the development and the implementation of laws, actions and programs that concern disability.** Speaking and writing explicitly about the specific problems of girls and women with disabilities increases the possibility that Governments take adequate measures to solve them. This requires the participation of girls and women with disabilities, as only women with disabilities have a deep knowledge of their specific problems and know the solutions.

Suggested questions:

- *What specific measures will the government implement to improve the political participation of girls and women with disabilities at all political and administrative levels?*

Suggested Recommendations:

- *To guarantee the appropriate support for the right to vote of persons with disabilities that need it.*
- *To establish an inclusive consultation process with persons with disabilities through their organizations during the establishment of the National Human Rights Institution and in the decision making process.*

³⁴ The National Equality Advisor is monitoring single cases of gender-based discrimination at the workplace and promotes equal opportunities between men and women, in collaboration with the national bodies responsible for active policies on employment, training and conciliation

- *To adopt a formal and systematic twin track approach to the rights of women and girls with disabilities and take concrete steps to mainstream the rights of women and girls with disabilities across all laws, policies and programs including those on gender equality, and systematically collect data disaggregated not only by gender but also by disability across all sectors.*

Article 26: Discrimination

The national anti-discrimination law is inconsistent in its scope, as it is restricted to legal protection but it does not provide for preventing discrimination of persons with disabilities.

The law 67/06 “Measures for the judicial safeguarding of persons with disabilities victims of discrimination”, does not completely satisfy the obligations deriving from the ratification of the UN CRPD in the field of non-discrimination. In particular, it does not include a definition of reasonable accommodation and **it does not explicitly acknowledge the lack of reasonable accommodation as a form discrimination based on disability.**

Moreover, the anti-discrimination Law 67/06 fails to provide details on its implementation in practice, thus preventing citizens with disabilities from undertaking legal actions at individual or collective level on the grounds of such Law in case of direct or indirect discrimination.

There are also the obligation to provide reasonable accommodation at work place established by **Law 99/2013, the legislative decree no. 151/2015 (art.1)**, providing for national guidelines including the definition of principles on reasonable accommodation to be adopted by employers.

In this regard the **Court of Justice of the European Union ruled against Italy** (CJEU, Case C-312/11 European Commission v Italian Republic) on 4 July 2013 for the inadequate transposition of the reasonable accommodation obligation. As a consequence, the above-mentioned Law 99/2013 modified Legislative Decree 216/2003 (which transposed EU Directive 78/2000 into national legislation) by including **reference to reasonable accommodation but only regarding the field of employment and vocational training and not in other areas of life.**

The forthcoming **National guidelines** ex art.1, decree no. 151/2015, regulating the principle of reasonable accommodation, **are also limited to the field of employment.** Moreover, the Guidelines **are not a legally binding instrument.**

Suggested questions:

- *Please explain when a definition of reasonable accommodation will be adopted to be included in the anti-discrimination Law 67/06 including the explicit recognition that the denial of reasonable accommodation beyond employment constitutes disability-based discrimination.*

Suggested Recommendation:

- *To adopt a definition of reasonable accommodation aligned to the UN CRPD and to enact legislation that explicitly recognises the denial of reasonable accommodation as disability-based discrimination across all areas of life including within public and private sectors.*

Labour market discrimination

The level of unemployment among persons with disabilities is very high. The total unemployment and inactivity rate of persons with disabilities stand at over 80% compared to the 12% in the general population.

There is no national policy that supports the employment of persons with disabilities, firstly because the available (and incomplete) data is administrative data and it is not gathered and elaborated by the National Institute of Statistics and secondly because the active labor policies, nowadays the most efficient to support employment in Europe, do not include persons with disabilities.

Particularly penalized are persons with intellectual and psycho-social disabilities, especially where there are no adequate competences in the services and employment agencies.

For these reasons persons with disabilities are discriminated when compared to other citizens with regard to the working opportunities, active labor policies and investments intended for them in the labor market. In addition, women with disabilities live in a condition of multi-discrimination that penalizes them in the attainment of a job.

Suggested questions:

- *What measures are being undertaken to address high levels of unemployment amongst persons with disabilities and to promote their inclusion into the open labour market, in particular women with disabilities?*

Suggested Recommendations:

- *To start the mainstreaming of persons with disabilities in general policies on national and regional labor and in general active policies on labor.*
- *To take measures to increase programs for women and girls with disabilities in the areas of education and employment in order to enhance their inclusion and to create equal opportunities for their participation.*

The double discrimination of Migrants with disabilities

Migrant children and adolescents with disabilities

The existing national statistics do not provide data and information capable to identify the double condition of those minors children of migrants and with disabilities.

To date we have on the one part research and statistics on persons with disabilities and on the other research on migrants, without being able to comprise the size and characteristics of the phenomenon in its wholeness, and above all without being able

to know the living conditions of the people who suffer every day this dual risk of discrimination.³⁵

There is not an unique General Register (Municipality, Regional and Local Health Authority) on migrants children and adolescents with disabilities that give us the exact data. Further ambiguities arise from the use of the term "foreign" used improperly even for those children of migrants born in Italy [over 37%, including Roma, Sinti and Travelers (Caminanti) children]³⁶.

Migrant children and adolescents with disabilities and psychosocial disabilities have a rate of presence in residential structures higher than the total number of children with disabilities and psychosocial disabilities: 34 migrants children institutionalized out of 100.000 migrant minors resident versus 26 children (who are not migrants) out of 100.000 minors resident.³⁷

Migrant students with disabilities

Overall in the school year 2013/2014 foreign students with disabilities of state and non-state schools of all kinds and levels were 26.626, of which 8.617 with severe disabilities. The majority of them is present in the primary school (42.2%) and in the secondary school level (30.8%). From the school year 2007/2008 to date foreign students with disabilities have more than doubled, going from 11.760 to 26.626.³⁸

The tools used today, as regards both the diagnosis and the educational-pedagogical aspects, namely Functional Diagnosis, the Functional Dynamic Profile and the Individualized Education Plan (IEP), which are the evaluative and planning instruments used to identify the capabilities and needs of pupils with disabilities and to define educational objectives, **are not taking account of the multicultural dimension.**³⁹

A survey conducted in the schools of the City of Bologna, later expanded at national level⁴⁰, did not find a single example of the IEP writing in an official language of migrant parents. The school does not implement "the language support measures", nor for children or for adults.⁴¹

³⁵ Migranti con disabilità: Conoscere i dati per costruire le politiche. PON Governance e Azioni di Sistema FSE 2007-2013 – Obiettivo Convergenza – Asse D – Obiettivo specifico 4.2 – Azione 4

³⁶ Caldin R., Dainese R., L'incontro tra disabilità e migrazione a scuola in A.Canevaro, L. d'Alonzo, D. Ianes e R. Caldin, L'integrazione scolastica nella percezione degli insegnanti, Trento, Erickson, 2011, pp. 89-114

³⁷ Indagine ISTAT sui presidi residenziali socio-assistenziali e socio-sanitari, 2012-2013

³⁸ Ongini V., Alunni di cittadinanza non italiana con disabilità, in Santagati M., Ongini V. (a cura di), "Alunni con cittadinanza non italiana. Tra difficoltà e successi. Rapporto nazionale A.S. 2013-2014", Quaderni Ismu 1/2015, Fondazione ISMU, Milano, 2015

³⁹ Alain Goussot (a cura di), Bambini "stranieri" con bisogni speciali. Saggio di antropologia pedagogica, Aracne editrice, 2011.

⁴⁰ Caldin R., Dainese R., L'incontro tra disabilità e migrazione a scuola in A.Canevaro, L. d'Alonzo, D. Ianes e R. Caldin, L'integrazione scolastica nella percezione degli insegnanti, Trento, Erickson, 2011, pp. 89-114

⁴¹ Ibidem

The difficulties in communication and involvement of migrant families impedes the construction of a trusting relationship and an educational alliance between the school and the family of migrants, which in turn hinders a positive schooling of students with disabilities children of migrants ⁴².

In schools there don't seem to be any strategy or specific actions for pupils with disabilities children of migrant. Educational policies and teaching practices seem to follow the same one-track approach: the actions and the measures put in place consider separately the aspect of the foreign origin and the condition of disability.⁴³ One-sided training (either just for disability or just for migration) of school staff risks of attributing every difficulty to one of the two areas.⁴⁴

Migrants needing Health services

Foreign-born parents face trouble with respect to the complexity of our health services system.

Migrant parents of children with disabilities often express themselves with difficulty, have a very low understanding of what is said to them. They suffer from the lack of clarity in communications (child's diagnosis with disabilities, sending motivation on the part of the school etc.) and may face enormous difficulties in accessing the service system. Health services are hardly achieved because of the awkward process of access. It can be problematic to face complex procedures (such as the process for the certification of disability). Even contacts by telephone are often inaccessible.⁴⁵

Those who have little knowledge of the Italian language and cannot benefit of documents translated into their language fail to navigate among the numerous acting subjects in the area, are lost in the complex bureaucratic procedures, do not know the specific technical languages of each area of intervention used by the different professionals involved in the care of the child with disabilities.⁴⁶

Furthermore the unilateral training (either just for disability or just for migration) of services staff risks attributing to one of the two areas each issue (e.g. Health services fail to recognize the suffering of the migrant parent derived from the child's disability or the behavioral problems as index of developmental disability in children and (the health services) ascribe them to migration).⁴⁷

Suggested questions:

⁴² Migranti con disabilità: Conoscere i dati per costruire le politiche. PON Governance e Azioni di Sistema FSE 2007-2013 – Obiettivo Convergenza – Asse D – Obiettivo specifico 4.2 – Azione 4

⁴³ Ibidem

⁴⁴ Caldin R., Dainese R., L'incontro tra disabilità e migrazione a scuola in A.Canevaro, L. d'Alonzo, D. Ianes e R. Caldin, L'integrazione scolastica nella percezione degli insegnanti, Trento, Erickson, 2011, pp. 89-114

⁴⁵ Ibidem

⁴⁶ Migranti con disabilità: Conoscere i dati per costruire le politiche. PON Governance e Azioni di Sistema FSE 2007-2013 – Obiettivo Convergenza – Asse D – Obiettivo specifico 4.2 – Azione 4

⁴⁷ Caldin R., Dainese R., L'incontro tra disabilità e migrazione a scuola in A.Canevaro, L. d'Alonzo, D. Ianes e R. Caldin, L'integrazione scolastica nella percezione degli insegnanti, Trento, Erickson, 2011, pp. 89-114

- *What measures has the Government taken to initiate a serious data collection system on the condition of migrants, in particular children and adolescents with disabilities?*
- *What measures has the Government taken to guarantee easy access to education and health services for migrants with disabilities including children of migrant parents?*

Suggested recommendations:

- *To provide appropriate facilities and adaptation for migrants with disabilities*
- *To guarantee the respect of rights of adult migrants with disabilities and migrant children with disabilities*