

ITALY

BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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Amnesty International submits the following information for consideration by the UN Committee on the Elimination of Racial Discrimination (the Committee), in advance of its review of Italy's 16th to 18th periodic reports, submitted under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention). This briefing focuses on some legal and policy developments which have had a discriminatory effect on Roma and migrants and which occurred since the Committee reviewed Italy's 14th and 15th periodic reports in 2008.

PART 1: DISCRIMINATION AGAINST ROMA

INTRODUCTION

Accurate figures are not available on the numbers of Roma, Sinti and Caminanti (Travellers) currently living in Italy. Estimates indicate their numbers to be between 130,000 and 170,000, corresponding to about 0.2 per cent of the Italian population. These communities include people from other European Union (EU) countries, mostly Romania, from the former Yugoslavia, an undefined number of stateless people and Italian citizens (about 50 per cent).¹

A large number of Roma in Italy live segregated in camps on the outskirts of urban areas in poor living conditions, often without basic infrastructure and services including access to sanitation and washing facilities, electricity and heating.² In recent years the situation has deteriorated with forced evictions escalating. The segregation in ever more dilapidated camps and the often repeated forced evictions have resulted in violations of the human rights of Romani people, in particular of their right to adequate housing, education, healthcare and employment.

International and regional human rights bodies, including this Committee, have repeatedly urged Italian authorities to end the practice of forced evictions and develop strategies to fulfil the right to adequate housing of these communities. They have also called on the authorities to address the widespread discrimination against Roma in access to housing, education, healthcare and employment, and the anti-Roma rhetoric used by some politicians and representatives of the authorities, who have often held Roma responsible collectively for

increased crime rates.³

Instead of prioritizing measures to improve the housing and living conditions of Romani communities and to address the discrimination that they experience, in recent years, and particularly since 2008, Italian authorities have deliberately taken, in the name of security, retrogressive measures that have encouraged and aggravated discrimination against Roma. Furthermore, anti-Roma rhetoric continues to be used, particularly by local politicians.

1.1 ROMA AND NATIONAL SECURITY: THE DECLARATION OF THE NOMAD EMERGENCY (ARTICLE 2, ARTICLE 5)

Associating the presence of Romani settlements with crime has become a growing tendency in political discourse and in the news media in Italy. Following the accession of Romania and Bulgaria to the European Union (EU) on 1 January 2007, there was a widely-reported concern across Italy about the risk of an “invasion” of migrants from these countries, in particular of Roma ethnicity, and about the rise in crime that this allegedly would produce. A few high-profile crimes allegedly committed by people of Roma ethnicity from Romania were also extensively reported in the news, exacerbating aggressive anti-Roma rhetoric by local and national politicians.⁴ Some Romani settlements were attacked by non-state actors.⁵

In May 2008, about a month after the national elections and following an election campaign in which the alleged “invasion” by Romanian Roma and the supposedly connected rise in crime had been major topics, the newly elected government headed by Silvio Berlusconi, adopted a set of administrative acts usually referred to as the Nomad Emergency.⁶ These consist of a decree of the President of the Council of Ministers signed on 21 May 2008, entitled “Declaration of the state of emergency in relation to the settlements of nomad communities in the territory of the regions of Campania, Lazio and Lombardy”; and in three ordinances of the President of the Council of Ministers of 30 May 2008, Nos. 3676/3677/3678, entitled “Urgent measures of civil protection aimed at confronting the state of emergency in relation to the settlements of the nomad communities in the territory of the regions of Lazio, Lombardy and Campania”. In the ordinances, the prefects of Naples, Rome and Milan were appointed delegated commissioners for the emergency and special powers were conferred on them. In 2009 the emergency was extended to the regions of Piedmont and Veneto and the same powers were conferred on the Prefects of Turin and Venice.

Under Law 225/1992 on the establishment of the civil protection service, the Council of Ministers may declare a state of emergency to respond to natural calamities, catastrophes or “other events which owing to their intensity and extent have to be confronted with extraordinary means and powers”.⁷ The declaration of the state of emergency must set out its duration and its geographical extent in relation to the quality and the nature of the events. In order to overcome the emergency, the government may adopt ordinances derogating from legislation in force: these ordinances have to indicate from which main legal provisions there can be derogations and the reasons for the derogations. With a view to carrying out the interventions needed to overcome the emergency, the government may appoint a delegated commissioner. The administrative act designating the delegated commissioner must indicate the delegated activities, the ways in which they can be implemented, and the time frame.

The Italian government claimed that “*the adoption of measures of extraordinary character*”, including derogations from existing laws, was necessary to overcome an emergency threatening public order and security, allegedly posed by the mere presence of Roma settlements on the territory.

In July 2008, following considerable national and international criticism, the Italian government tried to argue that the measures provided for under the Nomad Emergency did not target any particular ethnic groups. The Ministry of the Interior issued guidelines on the implementation of the ordinances conferring emergency powers, stating that their main objectives were essentially:⁸

- To remove the grave situation of hygienic, sanitary and socio-environmental degradation existing in the illegal settlements as well as in the authorized camps;
- To promote the rule of law and better living conditions for the concerned communities by ensuring access to social, health and education services;
- To safeguard public security and the people living in these settlements.

The guidelines said that implementation of the ordinances must take place with “full respect for the fundamental rights and the dignity of the individual”, and that “the activities carried out by the commissioners should not address specific groups, subjects or ethnicities, but all those who are present in the illegal and authorized settlements regardless of their nationality and religious beliefs.”⁹

However, despite these guidelines, the measures adopted as part of the Nomad Emergency affected in practice only Romani communities because most if not all residents of authorized and unauthorized camps are of Roma ethnicity. In addition, residence in authorized camps in Milan is restricted by local regulations to people of Roma ethnicity. Furthermore, these guidelines, which are contained in an administrative circular, cannot, (and this was later confirmed by the Council of State in its judgment, detailed below) constitute a sufficient guarantee against the limitation of fundamental rights.

Since 2008 Amnesty International researched and documented the impact of the Nomad Emergency on Roma in Italy, in particular in the cities of Rome and Milan (See *The wrong answer: Italy's Nomad Plan violates the housing rights of Roma in Rome*, Amnesty International Index: EUR 30/001/2010; and *Italy: 'Zero tolerance for Roma' – Forced evictions and discrimination against Roma in Milan*, Amnesty International Index: EUR 30/022/2011). Amnesty International criticized the use of emergency powers and highlighted the lack of justification for the declaration of the Nomad Emergency, as well as its discriminatory nature, including through an analysis of the decree of the President of the Council of Ministers (see the report *Italy: 'Zero tolerance for Roma'. Forced evictions and discrimination against Roma in Milan* – Amnesty International Index: EUR 30/022/2011).¹⁰

1.2 THE END OF THE NOMAD EMERGENCY: COUNCIL OF STATE JUDGEMENT 06050/2011

Judicial challenges against the administrative acts on which the Nomad Emergency was

based eventually succeeded in November 2011. With judgement n. 06050 published on 16 November 2011, the Council of State, Italy's highest administrative court, ruled that the declaration of the Nomad Emergency had been unfounded and unsubstantiated, that the decree of the President of the Council of Ministers was illegitimate, as were the ordinances which nominated the delegated commissioners and all the subsequent acts that they had issued.¹¹

The complaint before the Council of State was filed by the European Roma Rights Centre and by a Romani family originally from Bosnia and resident in Rome. The complaint appealed against a ruling of the first instance administrative court of Lazio (*Tribunale Amministrativo Regione Lazio*, TAR Lazio), which had partially annulled the three ordinances of the President of the Council of Ministers. The TAR Lazio had annulled the part in which the ordinances authorized the identification of all persons present in 'nomad camps', irrespective of their age and legal status, through a procedure known as "*rilievi segnaletici e dattiloscopici*" (involving fingerprinting and photographing). The TAR Lazio had also annulled parts of the Regulations for authorized camps adopted in 2009 by the delegated commissioners for the regions of Lazio and Lombardia where they violated the right to freedom of movement and the right to work (see below for more details). However the TAR Lazio had rejected the claimants' fundamental point that the May 2008 decree declaring the emergency was unfounded and illegitimate.

The Council of State found instead that the decree was indeed unfounded and illegitimate because it had not identified the specific facts which, for their intensity and magnitude, would have justified the use of extraordinary powers in relation to the alleged emergency caused by the 'nomad settlements' in the regions of Campania, Lazio and Lombardia. According to the Council of State, a thorough analysis detailing exactly how the presence of the 'nomad settlements' would constitute an exceptional threat to public order and security was lacking in the decree, while only a few specific and isolated criminal acts which had been widely reported in the media were mentioned. According to the Council of State, even the alleged need to use extraordinary powers had not been justified, but motivated merely with the statement that it would have otherwise been impossible to achieve a coordinated action by all local authorities concerned.

The Council of State confirmed the first instance judge's decision to annul the ordinances of May 2008 in the parts regarding the identification of all persons present in 'nomad settlements'. The Council of State further confirmed that identification through fingerprinting and photographing is allowed by law only for persons deemed dangerous, for crime suspects and for those unable or unwilling to give proof of identity.

The Council of State also confirmed the TAR Lazio ruling annulling the provisions of the 2009 Regulations adopted by the delegated commissioners of Lazio and Lombardia for the authorized camps of those regions, which had unduly limited the right to freedom of movement and to work of the residents. The Regulations had imposed restrictions on the access to the camps and on the possibility of receiving visits by the residents in the camps; and had made the possibility of residing in the camps subject to the signing of a commitment to abide by a set of internal rules and to the attendance of training courses. These measures were ruled to be in violation of the right to freedom of movement, to choose one's work, to privacy and family life. According to the Council of State, limitations to these

constitutional rights can only be exceptional and not applied as a blanket and indistinctly to all the residents of the camps.

The Council of State did not find, however, that the principal and sole aim of the entire action of the administration in the context of the emergency had been to racially discriminate the Roma community, even though some of the institutions involved may have been moved by a discriminatory intent.¹²

At the time of writing, the effects of the ruling were still being considered by national and local authorities (following the loss of parliamentary majority, the Berlusconi government fell and a new government, headed by Mario Monti, was sworn in on 16 November 2011, the day in which the Council of State judgement was published).

Although the Nomad Emergency declared by the government has been annulled by the Council of State ruling, most of its legal and practical consequences persist and it is not clear if and how they will be remedied. Hence Amnesty International's concerns, which arose as a result of the implementation of the Nomad Emergency, also persist.

1.3 THE POWERS OF DEROGATION OF THE DELEGATED COMMISSIONERS UNDER THE NOMAD EMERGENCY AND THEIR IMPACT ON THE RIGHT OF ROMA TO ADEQUATE HOUSING AND JUSTICE (ARTICLES 2, 5 AND 6)

The ordinances adopted on 30 May 2008 gave the delegated commissioners in Campania, Lazio and Lombardy (and later in Piedmont and Veneto) the powers to:¹³

- Monitor authorized camps and identify illegal settlements (Article 1);
- Carry out a census of individuals and families, including children, and collect and store personal information, including through taking photos and fingerprints (Article 1);
- Carry out evictions from illegal settlements, and expulsions or removals of people with irregular status (Article 1);
- Identify new sites for authorized camps and promote the social inclusion and integration of residents in authorized camps (Article 1);
- Adopt all measures that are "useful" and "necessary" to overcome the emergency (Article 1); and
- While bound to respect EU directives and the general principles of the legal system, derogate from specific legal provisions provided that this is deemed "indispensable" and also from "*any other regional laws and regulations that are strictly connected to the activities foreseen by the ordinance*" (Article 3).

In particular, the ordinances authorized the delegated commissioners, where necessary, to derogate from "existing norms in the fields of environment, landscape, hygiene and health, territorial planning, local police, road conditions and circulation".¹⁴ They also authorized the

delegated commissioners, where they deemed it indispensable, to derogate from specific laws that protect human rights. These include provisions of the Law on public security and the Law on expropriation for reasons of public interest and of legislation on health care, as well as several provisions of Law 241/1990 which provide fundamental guarantees for people affected by administrative decisions.¹⁵

The authorization to derogate from provisions of Law 241/1990 is of particular concern because of its impact on people's rights to adequate housing, equal protection of the law and to an effective remedy. The delegated commissioners were authorized, where they deemed it indispensable, to derogate from requirements to respect:

- The right of people affected by administrative decisions to be informed about the opening of an administrative procedure;
- The right of those with a public or private interest in any administrative proceedings to intervene in that process;
- The right of people affected by an administrative decision or who have a right to participate in any legal process related to that administrative decision, to submit evidence, documents and briefs.

These protections are important in the context of any administrative decision which has an impact on the exercise of people's human rights, and they are extremely important in the context of decisions on evictions from homes or land. Under international and regional treaties to which Italy is a party, Italy is required to ensure that all persons have protection against forced evictions.¹⁶ This requires the authorities to provide, among other safeguards, all persons who are affected by the evictions with information about the proposed evictions, adequate and reasonable notice prior to the eviction and legal remedies to challenge eviction orders.¹⁷ Authorities are also required to engage in a genuine consultation with affected communities to identify all feasible alternatives to the eviction, which will not be possible in the absence of information about administrative decisions and an opportunity to challenge and engage with such a decision.¹⁸

Law 241/1990 is one of the few legal protections against forced eviction in Italy. It ensures that people affected by eviction orders, which are administrative decisions, have information about and are able to participate in legal processes related to such administrative decisions and to challenge them.

By allowing authorities to waive these requirements for evictions from 'nomad camps', the government excluded Romani communities from the equal protection of the law that is available to all other persons in Italy. In order to evict people who live in housing provided by the state, such as social housing, the authorities must apply Law 241/1990.

These protections are also essential to exercise the right to an effective remedy and to have equal protection under the law.¹⁹ Lawyers in Milan who support Romani communities in challenging forced evictions highlighted to Amnesty International in July 2011 the difficulties of bringing successful claims in the absence of documentary proof of decisions of evictions.

The emergency ordinances also authorized the delegated commissioners to adopt all “useful” and “necessary” measures to overcome the emergency and to derogate from “*any other regional laws or regulations that are strictly connected to the activities foreseen by the ordinance*”.

1.4 DISCRIMINATION AND HUMAN RIGHTS VIOLATIONS SUFFERED BY ROMA AS A RESULT OF THE NOMAD EMERGENCY (ARTICLES 3, 5 AND 6)

Amnesty International considers that the measures provided for in the decree declaring a state of emergency in relation to “nomad settlements” and the accompanying ordinances were discriminatory and breached Italy’s obligations under various international and regional human rights treaties not to engage in any act of, create or perpetuate racial discrimination.²⁰

Now that the Nomad Emergency has been annulled by the court Amnesty International has identified the following areas as requiring the authorities’ intervention to ensure that the effects of the emergency on the rights of Roma end in practice.

1.4.1 - THE NOMAD EMERGENCY HAS RENDERED HUNDREDS OF ROMA HOMELESS BY ENCOURAGING FORCED EVICTIONS

Under the Nomad Emergency forced evictions have been carried out not only in breach of international human rights laws and standards, but also in derogation of domestic legislation providing guarantees and establishing due process safeguards for people affected by administrative acts, as seen above.

Forced evictions have been celebrated as achievements by national and local authorities, and misused for political aims.²¹

They have been carried out without the offer of alternative accommodation or with an offer of a merely temporary shelter for women and small children – often refused because families wanted to stay together. For many families forced evictions resulted in having to find an even more precarious and unsafe shelter. Their possessions were often destroyed during the eviction. Many families experienced several evictions in the space of a few years. Forced evictions have driven Roma families into even deeper poverty and greater marginalization.

A forced eviction from the settlement of Bacula in Milan, which left several people homeless, including small children, was witnessed by Amnesty International delegates on 13 July 2011. The eviction was carried out by the authorities without any prior consultation with the community, in the absence of adequate notice or legal remedies, and without providing the residents with any alternative housing or compensation.

In addition to being often traumatizing, especially for children, forced evictions have disrupted education for children and work for adults. Children enrolled in education were often forced to change school at every forced eviction. Adults with a job could not justify to their employers their absence from work on the day of an eviction and often ended up losing their jobs.

Under the Nomad Emergency the right to adequate housing was also discriminatorily restricted for Roma living in authorized camps. The 2009 Regulations applicable to authorized camps in Lazio and Lombardy allowed the authorities to close the authorized camps for “reasons of public interest”. As a consequence, authorized camps were closed without providing inhabitants with adequate notification and consultation and with no offer of adequate alternatives. The camps of via Barzagli and via Triboniano in Milan, for example, were closed in May 2011. The closure was linked to development projects to be implemented in the area, connected to the Universal Exposition, to be held in Milan in 2015.²²

1.4.2 – THE NOMAD EMERGENCY HAS VIOLATED THE PRINCIPLE OF EQUALITY BEFORE THE LAW AND HAS LIMITED ACCESS TO JUSTICE FOR ROMA FORCIBLY EVICTED FROM AUTHORIZED AND UNAUTHORIZED CAMPS, BY ALLOWING FORCED EVICTIONS IN DEROGATION OF LEGISLATION PROVIDING FUNDAMENTAL GUARANTEES OF DUE PROCESS

Under the Nomad Emergency, the government authorized the waiver of certain national laws which protect human rights, including provisions providing fundamental guarantees for people affected by administrative decisions. This has meant that Romani communities living in authorized and unauthorized settlements were denied basic due process protections and the ability to challenge arbitrary or unlawful administrative decisions – fundamental guarantees that apply to all in Italy. These protections are essential to prevent and challenge forced evictions. Authorities in Italy were empowered to evict Roma people without providing them with information about the decision to evict them, and to deny them opportunities to participate in legal processes related to such decisions. Amnesty International considers that this constituted a violation of the right to be equal before the law and to the equal protection of the law and to an effective remedy.

1.4.3 – IN ROME, THE NOMAD EMERGENCY HAS PERPETUATED SEGREGATION INTO CAMPS AS THE ONLY HOUSING SOLUTION AVAILABLE TO ROMA

With very few and recent exceptions, for decades Italian authorities have implemented policies whereby the camps were the only housing solution for Roma, while at the same time failing to ensure that camps meet international and regional standards on adequate housing.

Roma living in camps are discriminated against not only because they are segregated, but also because housing in camps has proved to be sub-standard and deeply inadequate. International bodies, including this Committee, have reiterated for over a decade how Italy was failing to meet its international obligations leaving Roma in unsafe, unhealthy, overcrowded accommodation with no security of tenure.²³

In 2008 this Committee expressed concern “*that Roma and Sinti still live in conditions of de facto segregation in camps, in which they lack access to the most basic facilities*”. The Committee recommended that the Italian authorities develop and implement policies and projects aimed at avoiding segregation of Romani communities in housing, and involve Romani communities and associations as partners in house construction, rehabilitation and maintenance.²⁴

Instead of implementing this recommendation, since 2008 the Italian authorities, under the Nomad Emergency, adopted retrogressive measures which have further undermined the communities’ security of tenure and access to adequate housing – measures which have been

developed without adequate consultation with Romani communities.

The Nomad Plan for the city of Rome, launched on 31 July 2009 by representatives of the Commune of Rome and the Prefect of Rome as delegated commissioner for the Nomad Emergency, was the first scheme to have been developed using special powers provided for by the Nomad Emergency. It paved the way for the forced eviction of some 6,000 Roma and the resettlement of most – but not all – in 13 new or expanded camps on the outskirts of Rome. Consultation with the Roma affected by the plan has been inadequate (where a degree of consultation has taken place, this appears to have happened shortly before a planned eviction of a camp is due to start; and in the absence of crucial information about the location and quality of the alternative housing on offer). Those deemed entitled to be resettled were offered only accommodation in other camps, not in permanent housing, where many of them aspire to live. They were given no choice about the camps they would be sent to. Many worried about disruption to their children's education and to their employment prospects. Some also worried about being resettled without consideration for their family ties and for possible ethnic tensions (particularly among Roma coming from the former Yugoslavia). There was significant concern also about the eligibility criteria to be resettled. It was unclear whether the authorities would have excluded people with a criminal conviction or even with pending criminal charges. It was also unclear whether one person with a criminal record would have made the whole family ineligible for resettlement. For those deemed not eligible for resettlement, the only options left were leaving Rome or finding shelter in precarious unauthorized settlements.²⁵

The Nomad Plan involved the expansion and refurbishment of some authorized and some tolerated camps and the creation of two new camps and one transitional structure. The plan was scheduled to be implemented by June 2010. At the time of writing only one camp – La Barbuta – had been built but had not been opened yet and its legal status following the Council of State ruling was unclear.

Amnesty International expressed its concern about the impact of the Nomad Plan on the human rights of Roma in the capital in the report *The wrong answer: Italy's Nomad Plan violates the housing rights of Roma in Rome*, (Amnesty International Index: EUR 30/001/2010). The organization believed that as it was constituted, the plan would have forced many Roma further outside the capital, thus further reducing their access to employment and essential services. The organization was also concerned about the lack of adequate consultation with those affected. More fundamentally, Amnesty International considered that the plan was perpetuating segregation in housing, offering only camps as an option for housing the Roma, even though many of those interviewed by the organization said they would have preferred normal housing.

Although Roma can rent or buy private accommodation and can apply for social housing, these options are extremely difficult to pursue in practice. In particular, it is virtually impossible for Roma living in camps to gain access to social housing. One criterion for the allocation of social housing in Italy is proof of prior eviction from private accommodation (so-called "*sfratto*"). Roma who have only ever lived in camps (including Italian Roma) are, as a result, *de facto* excluded from accessing social housing. This creates a situation of indirect discrimination against Roma, since the effect of the formally neutral requirement is to disadvantage them disproportionately. The Nomad Plan did nothing to address this issue.

Evictions from camps – even if the camps are authorized or tolerated – are not treated as equivalent to evictions from private sector accommodation for the purposes of determining access to social housing.

As the Nomad Plan was being implemented, Amnesty International's concerns were not dispelled. The plan continued to be presented by the authorities chiefly as an opportunity to solve the security concerns of the mainstream population in the capital rather than as an opportunity to ensure that the fundamental rights of the Roma community were protected, respected and fulfilled.

Accommodation of better quality and greater access to utilities in the new camps would allegedly offer an improvement in living conditions for many of the Roma people currently living in "tolerated" or "unauthorized" camps.²⁶ However, only one new camp had been built by the end of 2011 – La Barbuta, near Ciampino airport – and had not been opened by the end of 2011. Living conditions deteriorated significantly in the camps where hundreds of Roma were resettled following their eviction from other settlements as part of the implementation of the Nomad Plan.

The camp of La Barbuta, which had been built using the special powers descending from the Nomad Emergency to derogate from current legislation, was opposed by neighbouring administrations. Now that the Nomad Emergency has fallen, rendering illegitimate all the acts enacted on its basis, it is unclear whether the new camp will ever be used. The camp is extremely isolated and Romani families interviewed by Amnesty International did not want to move there and have their children's education so disrupted. Some families told Amnesty International that they would consider moving there but only if the housing provided constituted a real improvement on the small container they were living in. They acknowledged that sending children to school and finding employment would become more difficult. Amnesty International is concerned by reports that the building of the La Barbuta camp would have continued even after the judgement of the Council of State, and by statements by Rome local authorities indicating a will to open the camp and transfer there Roma currently living in the Tor de' Cenci camp. Amnesty International believes that as a result of the judgement of the Council of State, the administrative acts which allowed the identification of the grounds for the La Barbuta camp as well as all the administrative acts issued to build the camp are now void. The Council of State ruled that individual administrative acts issued on the basis of the Nomad Emergency decrees and ordinances were void but could be re-issued and thus be made lawful by the competent authorities. In Amnesty International's view, the relevant local authorities will therefore need to immediately cease any further construction at La Barbuta and review the legal situation of the camp.

As for the camps to which hundreds of Roma evicted under the Nomad Emergency were relocated, Amnesty International's delegates found during their visits and in interviews with local NGOs that living conditions have significantly deteriorated. Structural improvements and upgrading of infrastructures to accommodate the new arrivals have been insufficient or carried out with delays and in a reactive rather than systematic manner. Spaces for socialization, such as small areas for children to play, had to be given up to make room for the containers assigned to the new arrivals. Local NGOs were concerned about difficulties to ensure access to schools for the children from Casilino 900, the biggest unauthorized settlement evicted in 2010.

1.4.4 – IN ROME, AN UNLAWFUL PROCEDURE OF IDENTIFICATION OF ROMA BASED ON THE NOMAD EMERGENCY LED TO INFRINGEMENTS OF THE RIGHTS TO PERSONAL FREEDOM AND NOT TO BE DISCRIMINATED AND TO EQUALITY BEFORE THE LAW

One of the most objectionable initiatives undertaken by the authorities in Rome to implement the Nomad Plan was the identification of all the residents in the camps prior to their eviction. The identification was carried out by family unit, allegedly in order to grant access to the new camps and to be issued with a document of authorization to temporary stay (DAST) – a card stating the name of the holder and authorizing the holder to stay for a period of time in a specified authorized camp. This process of identification reportedly involved the taking of photographs and the fingerprinting of all the residents of the camps due to be closed, including minors. Amnesty International, along with several other NGOs, expressed concern about the discriminatory nature of such process of identification which had been applied also to persons already in possession of valid identity documents (including Italian citizens).

A complaint against this procedure brought before the TAR Lazio by a Roma family was successful and eventually resulted in the annulment of the decree declaring the Nomad Emergency, as mentioned above.

Amnesty International and other NGOs are particularly concerned that such identifications, carried out without any link to criminal investigations, have resulted in the gathering of personal data regarding exclusively persons of Romani origin and that this data may now be kept by a police department, in violation of national and international human rights law. Amnesty International considers that such identifications were discriminatory and that the holding of the resulting information by the authorities may result in further discrimination of the individuals affected, including with regard to the administration of justice.

1.4.5 – THE NOMAD EMERGENCY BREACHED THE RIGHTS TO FREEDOM OF MOVEMENT, WORK, PRIVACY AND FAMILY LIFE OF ROMA LIVING IN SOME AUTHORIZED CAMPS, THROUGH THE DISCRIMINATORY IMPOSITION OF RESTRICTIONS TO THESE RIGHTS

Following the declaration of the Nomad Emergency, in February 2009, a new regulation for the authorized camps of Lombardy was introduced by the Prefect of Milan in his capacity as delegated commissioner in Lombardy for the Nomad Emergency (a similar regulation was introduced by the Prefect of Rome as delegated commissioner in Lazio). Under the new regulation, the authorities imposed restrictions and rules on the residents of the camps that are not applied to people living in other housing programmes that are also maintained by the authorities, such as social housing. As only Romani communities live in authorized camps, these restrictions discriminate against these communities.

Under these regulations:

- Residents in an authorized camp must be “nomads” or relatives or co-habitants of “nomadic” people; they must not have alternative housing or an income that would allow them to find alternative accommodation;
- The head of each household is required to sign a “Sociability and Legality Pact”, undertaking on behalf of the entire family to respect rules of conduct and social cohabitation (including having guests to stay only if authorized by the authorities);

- A management committee, composed of appointed representatives of the municipal administration including the local police and social welfare authorities, issues and revokes authorizations to stay in the camps. The Committee may also decide to temporarily suspend access to the camps by guests for reasons of security;
- The role of a social manager is introduced, to be carried out by an NGO, to, among other things, provide each resident with an identity badge and cooperate with police and social welfare authorities; and to verify the identity of residents' guests and friends and to admit them no later than 10pm; and to register absences from the camp lasting more than 48 hours.
- An entire household's authorization to stay in the camp can be withdrawn, among other reasons:
 - If any member of the household receives a final conviction for a criminal offence;
 - If the assigned housing unit is abandoned for longer than a month, without authorization;
 - If there is a failure to ensure that children regularly attend school;
 - In the case of a refusal at least twice of an (unspecified) job opportunity monitored by the municipality;
 - Residents are not permitted to stay in the camp for an indefinite period of time, but for a maximum period of three years;
- The municipality may close down the camps at any time for reasons of public interest or to prevent or eliminate grave dangers that threaten public safety and urban security, and is not required to provide alternative accommodation.

Most of the circumstances that have led or may lead to the eviction of Roma from authorized camps on the basis of the 2009 Regulations would not lead to a loss of entitlement to social housing. Evictions from social housing units of families who lose the entitlement are extremely rare.²⁷ If a family loses the entitlement because it exceeds the maximum income, the family is not evicted but simply pays a higher rent. Users of social housing are evicted only when they violate specific provisions of the social housing legislation by, for example, abandoning the unit for more than six months or by using it for illegal activities. However, even in these cases, the authorities rarely decide to start an administrative procedure to evict them and, if they do, this can take up to several years. Appeals rights are stronger in social housing, allowing initial appeals to a higher administrative body, the decision of which can again be appealed before the administrative tribunal, and finally before the Council of State, the highest administrative court. Those living in camps, however, may only appeal to the management committee of that camp. Notice periods are also much shorter for camp residents: in authorised camps families are given 48 hours notice, which may be delayed once by appealing, but if the appeal fails they are only given a further 48 hours to leave the camp. Social housing residents, in contrast, are given 15 days to respond to a notice that they may be asked to vacate. After the expiry of the deadline, the authority may give six

months notice to vacate, which may be appealed as outlined above.

Furthermore, the regulation, by resting the rights of all inhabitants of a dwelling in one individual, may result in penalising them for the actions of other household members. This could have a disproportionate impact on women and girls.²⁸

RECOMMENDATIONS

Amnesty International has made the following recommendations to the Italian national authorities:

- Respect and enforce international and regional anti-discrimination obligations with a view to preventing and combating discrimination against Romani people;
- Ensure that all necessary measures are taken to fully comply with Article 5 of the Convention, in particular to guarantee the right to equality before the law to Romani people in the enjoyment of the right to housing;
- Provide effective remedy and reparations to those who have suffered human rights violations as a consequence of the implementation of the Nomad Emergency, in particular:
 - Those forcibly evicted from authorized and unauthorized camps or who suffered other violations of their right to adequate housing;
 - Those whose rights of freedom of movement, work, privacy and family life have been unduly restricted on the basis of discriminatory regulations applied to authorized camps; and
 - Those affected by unlawful and discriminatory identification procedures.

Such effective remedy, which may include compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition, should be proactively offered by the government through the creation of appropriate mechanisms and procedures and the identification of individuals and families who may be entitled to it;

- Establish and adequately fund national plans or strategies for the integration of Roma people, with a view to eradicate their longstanding discrimination and marginalization, and to fully guarantee their access to all human rights, including economic, social and cultural rights;
- Enact and enforce a clear prohibition against forced evictions;
- Promote and coordinate with competent local authorities a nation-wide review of conditions in existing camps, with a view to ensuring they meet minimum international standards for adequate housing, and open a genuine consultation with the residents on their housing needs, including with the aim to confer a minimum degree of security of tenure on all people lacking such protection;

- Guarantee access to social housing to Roma, at least on the same terms as to the rest of the population, including by making eviction from an authorized camp equivalent to eviction from private accommodation for the purposes of applying for social housing.

Amnesty international has made the following recommendations to the authorities in Milan and Rome:

- Ensure that evictions are only carried out as a last resort after all other feasible alternatives have been explored. Procedural protections required under international human rights law should be in place before any evictions are carried out, in particular the requirements on genuine consultation to explore all feasible alternatives to eviction, provision of information on the eviction, adequate notice, legal remedies, compensation and adequate alternative housing;
- Suspend immediately implementation of any plans aiming at the closure of authorized or tolerated camps inhabited by Roma, and revise such plans in a transparent and genuine consultation with the affected communities in full compliance with international human rights law and standards;
- Improve the living and housing conditions in authorized camps, in consultation with the residents, to ensure compliance with international and regional standards on adequacy of housing.

PART 2: CRIMINALIZATION OF IRREGULAR MIGRATION

INTRODUCTION

At the beginning of 2011, foreign nationals in Italy were estimated to be 5.4 million, that is, about 8.9 per cent of the population.²⁹ Of these, 4.9 million have a regular migration status.³⁰ The foreign nationals with an irregular migration status are estimated to be between 440,000 and 540,000.³¹

Because legal migration channels are insufficient, entering the country irregularly and/or experiencing a period of irregular stay is a common stage of the migration experience in Italy. In the past 20 years, Italian governments have often resorted to ad-hoc regularisation measures in order to decrease the ratio of irregular migrants within the overall migrant population.

Part 2 of this submission analyses some selected aspects of the Italian migration legislation, introduced after May 2008, when the newly established government announced several emergency legislative measures, known as the Security Package (*pacchetto sicurezza*), intended to fight “widespread illegality linked to illegal migration and organized crime”.³²

The Security Package was drafted and adopted in a context of stigmatization of migrants by media and politicians and of increasing xenophobia among the population. In this framework, the government openly linked immigration control with public security. The Italian government expressly stated:

“The phenomenon of illegal immigration in the Italian experience is often characterised by crimes committed by illegal migrants specifically related to their condition of irregular presence on the national territory.”³³

The Security Package thus contributed to the marginalization and stigmatization of migrants by reinforcing the public perception that Italian security is threatened by an uncontrollable wave of dangerous irregular migration. At the time of its adoption, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, commented:

“While stronger action against individual criminal offenders may be required... the swift adoption of broad packages of the sort currently implemented or considered in Italy entails a clear risk of linking insecurity to specific groups of population and of generating confusion between offenders and foreigners. Such risk should be carefully avoided, if one is not to further feed xenophobic tendencies.”³⁴

The UN Special Rapporteur on the right to education and the UN Special Rapporteur on the human rights of migrants considered:

“The Security Law [Law 94/2009] appears to be not in line with the commitments of States, inter alia, in the framework of the Durban Declaration and Plan of action which highlighted the importance of creating conditions conducive to greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves.”³⁵

2.1 DISCRIMINATORY NATURE OF THE CRIMINALIZATION OF “ILLEGAL ENTRY AND STAY” (ARTICLES 2(A) AND 5(A))

The Security Package introduced the criminal offence of “illegal entry and stay within the territory of the state” entailing a monetary penalty ranging from €5,000-10,000.³⁶

The crime of “illegal entry and stay” can only be committed by non-nationals; it entails the imposition of criminal sanctions against migrants solely on the basis of their immigration status. This Committee in its General Recommendation XXXI has called on states, *inter alia*: “(a) To eliminate laws that have an impact in terms of racial discrimination, particularly those which target certain groups indirectly by penalizing acts which can be committed only by persons belonging to such groups, or laws that apply only to non-nationals without legitimate grounds or which do not respect the principle of proportionality.” Amnesty International believes that the crime of “Illegal entry and stay” is inherently discriminatory on the basis of national origin because it targets migrants by penalizing acts which can be committed only by migrants.³⁷

Furthermore, the crime of “illegal entry and stay” is to be adjudicated through a special “fast-track” procedure before a *giudice di pace*.³⁸ Under this procedure, the public prosecutor can bring the defendant to trial within 15 days and the defendant can request no more than seven days in preparation of the defence. However, if the defendant is detained or there are particular reasons of urgency, the trial can start immediately and the defendant can request no more than 48 hours in preparation of the defence.³⁹ Amnesty International believes that the provisions of the Security Package establishing the procedure to adjudicate the crime of “illegal entry and stay” lead to discrimination in the administration of justice, in particular with respect to the right to equality of arms.

2.2 CRIMINALIZATION OF “ILLEGAL ENTRY AND STAY” AND ACCESS TO JUSTICE (ARTICLES 2(A), 5(B) AND 6)

The criminalization of “illegal entry and stay” in effect creates significant obstacles to the enjoyment of the human rights of migrants, both in regular and irregular situation. This is because the criminalization of “illegal entry and stay” triggers the existing obligation on the part of public officials, police and judicial authorities to report, investigate and prosecute crimes, including the crime of “illegal entry and stay”.

In addition to the normal obligations and functions of police and judicial authorities, under Articles 361 and 362 of the Italian Criminal Code any public officer or person in charge of a public service (including all civil servants and local authority employees, teachers, etcetera) are obliged to report all criminal acts to the police or judicial authorities. With the important exception of doctors and other health professionals,⁴⁰ all public officials are obliged to report

irregular migrants. Reporting and prosecution is thus the only available response of Italian authorities to irregular migrants trying to access public services other than basic health services. The human rights consequences of this situation are serious and widespread.

Any irregular migrant wanting to report an abuse, including racist attacks, labour exploitation, harassment, or seeking protection against violence, faces the risk of being reported, charged for the offence of “irregular entry or stay” or even imprisoned and ultimately deported. This leads many irregular migrants to avoid seeking legal remedies, even where they are entitled to them.

Amnesty International believes that the provisions of the Security Package criminalizing “illegal entry and stay” discriminate against migrants in an irregular situation in the enjoyment of their right to seek and obtain remedies for human rights violations, including acts of racial discrimination. The organization therefore believes that the provisions of the Security Package criminalising “illegal entry and stay” should be repealed.

2.3. LABOUR RIGHTS (ARTICLE 5(E)(I))

Irregular migrants in Italy are often victims of exploitation by private employers, as they are frequently unable to secure adequate pay or standards of employment. Moreover, abuses by labour providers illegally employing workers in exploitative working conditions, a phenomenon known as *caporalato* and often linked to mafia-type criminal organizations, are particularly widespread in sectors such as agriculture and construction.

In January 2010, Amnesty International expressed concerns on the trafficking and exploitation of migrant agricultural workers in Southern Italy, who earn as little as €2 an hour while living in abandoned buildings without running water, electricity or heating.⁴¹ The exploitation, violence and other abuses severely affecting migrants working in agriculture have been reported also by NGO Medici Senza Frontiere (MSF, Doctors without Borders),⁴² journalists⁴³ and trade unions.⁴⁴ Trade unions have also noted exploitation and discrimination against migrant workers in the construction sector.⁴⁵ Concerns were raised by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,⁴⁶ as well as this Committee.⁴⁷

Rather than addressing the human rights violations suffered by the victims of labour exploitation, the Italian government has created obstacles to the realization of the right of migrant workers in an irregular situation to seek and obtain remedy for violations of their rights, by criminalizing their entry and stay in the country. National media have reported several cases of irregular migrants who decided not to report the abuses suffered due to the risk of being charged with the crime of “illegal entry and stay”.⁴⁸

Under the International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143), migrant workers in an irregular situation have the right to equality of treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits.⁴⁹ This includes the possibility to claim such rights before a competent body. The ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) considered that, as a result of the Security Package, in Italy this right may “remain merely theoretical if migrant workers in an

irregular situation who report violations of these rights are immediately expelled".⁵⁰

More broadly, criminalization of irregular migration threatens the ability of the Italian labour inspection system to monitor and implement the rights of migrant workers. In 2008, the ILO Committee of Experts noted that in Italy numerous structural and legislative measures had been adopted for combating unauthorized work and illegal employment and that labour inspectors played a major role in this process. The ILO Committee of Experts considered that the role assigned to labour inspectors in this context could severely jeopardize the performance of their original duties as defined by the relevant ILO Conventions, namely to ensure that workers are protected against the imposition of conditions of work which are contrary to the legislation.⁵¹ The introduction of the crime of "illegal entry and stay" in 2009 can only compound these concerns, as labour inspectors, like other public officials, are under the obligation to denounce irregular migrants. As a result, irregular migrant workers who report abusive working conditions risk not only losing their job, but also being charged with a crime.

The ILO Committee of Experts expressed concern that the criminalization of irregular migration in Italy "will further marginalize and stigmatize migrant workers in an irregular situation, and increase their vulnerability to exploitation and violation of their basic human rights".⁵² Amnesty International believes that the provisions of the Security Package criminalizing "illegal entry and stay" could discriminate against migrants in an irregular situation in the enjoyment of the right to seek and obtain remedy for violations of their labour rights.

In September 2011, a law was adopted introducing in the criminal code the crime of "unlawful intermediation and labour exploitation" (*intermediazione illecita e sfruttamento del lavoro*), a phenomenon known in Italian as *caporalato* and defined as the act of

*conducting an organized activity of intermediation, recruiting manpower or organizing its work, characterized by exploitation, through violence, threat or intimidation, taking advantage of the workers' situation of need or want.*⁵³

Although this is a positive development, doubts can be expressed with respect to the real possibility of this provision being successfully implemented, as the criminalization of "illegal entry and stay" makes it effectively impossible for irregular migrants, who are particularly at risk of being victims of this crime, to report it. An early legislative proposal to criminalize *caporalato*, which included provisions to grant temporary residence permits to victims of "serious labour exploitation",⁵⁴ was abandoned following the change of government in April 2008.

2.4. DISCRIMINATORY RESTRICTIONS ON BIRTH REGISTRATION (ARTICLES 2(A) AND (C) AND 5(D))

The Security Package requires the presentation of a residence permit for certain official civil acts (*atti di stato civile*) such as birth and death registration.⁵⁵ This requirement makes it impossible, *inter alia*, for irregular migrant parents to register the birth of their child. The UN Special Rapporteur on the right to education and the UN Special Rapporteur on the human rights of migrants reported that in the first six months of 2009 alone, there were at least 412

children who were born to parents without a residence permit and whose birth was hence not registered.⁵⁶

The Italian government minimised the negative consequences of this provision, stating that birth registration would not be necessary for the child to acquire Italian nationality at the coming of age, provided that the other requirements were complied with.⁵⁷ However, the Security Package by requiring the presentation of a parent's residence permit to register the birth of a child in effect deprives children of migrants in an irregular situation of their rights to birth registration, nationality at the time of birth and recognition as a person before the law (Articles 16 and 24, International Covenant on Civil and Political Rights and Articles 7 and 8, Convention on the Rights of the Child).

2.5. REPORTING OBLIGATIONS OF MONEY TRANSFER AGENCIES (ARTICLES 2(C) AND 7)

The Security Package imposed an obligation on money transfer agencies, often used by migrants to remit part of their income to their country of origin, to verify the migration status of their clients. If non-EU nationals request to transfer money abroad, the money transfer agency must acquire and store for 10 years a copy of their residence permit. If the individual cannot show a permit, the agency must inform the local police within 12 hours. Failure to comply with this requirement may result in the cancellation of the agency's license.⁵⁸

The UN Special Rapporteur on the right to education and the UN Special Rapporteur on the human rights of migrants noted that these provisions may "further foster a culture of denunciation vis-à-vis irregular migrants".⁵⁹ In 2006, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had commented with respect to similar reporting measures taken in Japan:

*The system put in place by the Immigration Bureau of the Ministry of Justice urging citizens to report suspected illegal migrants anonymously on its website is an incitement to racism, racial discrimination and xenophobia: it is essentially based on the criminalization of foreigners and promotes a climate of suspicion and rejection towards foreigners. This reporting system should therefore be abolished without delay.*⁶⁰

Amnesty International believes that the provisions of the Security Package imposing on money transfers agencies an obligation to report migrants suspected to be in an irregular situation to the police promote a climate of suspicion and rejection towards migrants, fuelling racism and xenophobia. The organization therefore believes that those provisions should be repealed.

RECOMMENDATIONS

Italy should repeal the following provisions of the Security Package:

- Provisions criminalizing "illegal entry and stay";
- Provisions establishing the procedure to adjudicate the crime of "illegal entry and stay";

- Provisions requiring parents to show a residence permit to enable the registration of a child's birth;
- Provisions imposing on money transfers agencies an obligation to report migrants suspected to be in an irregular situation to the police.

1 Senato della Repubblica – Commissione straordinaria per la tutela e la promozione dei diritti umani, “Rapporto conclusivo dell’indagine sulla condizione di Rom, Sinti e Camminanti in Italia”, 9 febbraio 2011, p. 18.

2 The camps where many Roma live in Italy fall into three main categories:

Authorized camps: Residents usually have a degree of security of tenure, since the camps are located on public land and are authorized by formal decisions of the authorities. Usually the authorities are in charge of maintaining essential infrastructure for sanitation, electricity and water.

“Tolerated” or “consolidated” camps are settlements that were built irregularly on private or public land. They have usually existed for relatively long periods of time and the owners of the land do not threaten the community with eviction. In some cases, the authorities provide some, such as rubbish collection and transport of children to schools. The residents of these settlements have no security of tenure.

Unauthorized camps are settlements that were built irregularly on private or public land and that are dismantled periodically. Such settlements are usually the most precarious, have no services and no security of tenure.

3 See for example: UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Italy, 16 May 2008, CERD/C/ITA/CO/15; European Commission against Racism and Intolerance (ECRI), Statement on recent events affecting Roma and immigrants in Italy, 20 June 2008; Commissioner for Human Rights of the Council of Europe, Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008, 28 July 2008; UN High Commissioner for Human Rights mission to Italy 10-11 March 2010, Press statement 11 March 2010; Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Italy, 15 October 2010.

4 See for example: La Repubblica, “Roma, caccia alle assassine di Vanessa. La polizia ha le loro fotografie”, 28 April 2007, <http://www.repubblica.it/2007/04/sezioni/cronaca/ferita-ombrello-metro/causa-omicidio/causa-omicidio.html?ref=search>; La Repubblica, “Sicurezza, Veltroni contro la Romania. Per le espulsioni varato un decreto legge”, 31 October 2007, <http://www.repubblica.it/2007/10/sezioni/cronaca/tor-di-quinto/reazioni-uccisa/reazioni-uccisa.html>; Rainews24, “Donna seviziata ancora in coma. Fini contro Amato, e’ polemica”, 1 November 2007, <http://www.rainews24.rai.it/it/news.php?newsid=75338>. See also: Osservazione, “The Latest Public Enemy: Romanian Roma in Italy”, 21 January 2008.

5 For details on some of these attacks see *Italy: The witch-hunt against Roma people must end* (AI Index: EUR 30/006/2008); and *Italy: Provide redress to Romani victims of racist violence* (AI Index: EUR 30/024/2011).

6 The term “nomads” has been used in legislation to refer to Romani communities, even those that are no longer nomadic, and Italian authorities often use the terms “Roma” and “nomads” interchangeably. Amnesty International considers that this is not just a question of semantics. If Roma are all deemed indiscriminately to be nomads, they will be treated as nomads and provided with housing solutions suited to a nomadic lifestyle. The February 2011 report of the Italian Senate (see endnote 1) indicates that only an estimated 3 per cent

of these communities living in Italy are nomads. Several civil society organizations working with Romani communities told Amnesty International that the use of the term “nomad” by politicians and officials is deliberate. On the one hand, the term appears more “politically correct” and neutral; it shields the authorities from the accusation of discriminating on the grounds of ethnicity. On the other, it reinforces the idea that the presence of Roma is just temporary and that these communities are “alien” to the rest of Italian society.

7 The deliberation of the Council of Ministers takes the form of a Decree of the President of the Council of Ministers, Law 225/1992, Establishment of a national civil protection service (Legge 225/1992 Istituzione del servizio nazionale della protezione civile), Article 5.

8 Guidelines for the implementation of the ordinances of the President of the Council of Ministers of 30 May 2008, nos. 3676, 3677 and 3678, regarding settlements of nomad communities in the regions of Campania, Lazio and Lombardy (Linee guida per l’attuazione delle ordinanze del Presidente del Consiglio dei Ministri del 30 maggio 2008, nn 3676, 3677 e 3678, concernenti insediamenti di comunità nomadi nelle regioni Campania, Lazio e Lombardia), Rome, 17 July 2008.

9 Guidelines for the implementation of the ordinances of the President of the Council of Ministers of 30 May 2008, nos. 3676, 3677 and 3678, regarding settlements of nomad communities in the regions of Campania, Lazio and Lombardy (Linee guida per l’attuazione delle ordinanze del Presidente del Consiglio dei Ministri del 30 maggio 2008, nn 3676, 3677 e 3678, concernenti insediamenti di comunità nomadi nelle regioni Campania, Lazio e Lombardia), Rome, 17 July 2008.

10 The adoption of the Nomad Emergency has been widely criticized by international and regional human rights bodies. Among others, the following pronouncements are worth mentioning: Centre on Housing Rights and Evictions (COHRE) v. Italy, the European Committee on Social Rights, 25 June 2010.

11 Sentenza del Consiglio di Stato N. 06050/2011. See in particular the end of paragraph 6: “...va rilevata l’illegittimità degli atti di esercizio dei poteri emergenziali di protezione civile per difetto dei presupposti di fatto...” and paragraph 7: “L’illegittimità del decreto del Presidente del Consiglio dei Ministri del 21 maggio 2008, per le ragioni sopra esposte, deve comportare secondo i comuni principi la caducazione, per illegittimità derivata, di tutti gli ulteriori atti impugnati, e quindi non soltanto delle ordinanze presidenziali del 30 maggio 2008 di nomina dei Commissari delegati per l’emergenza, ma anche di tutti i successive atti commissariali (che, a questo punto, risulterebbero adottati in carenza di potere).”

12 Sentenza del Consiglio di Stato N. 06050/2011, paragraph 6: “...questi elementi, se forse sono idonei a disvelare un intento discriminatorio da parte di taluno dei soggetti istituzionali coinvolti, non autorizzano però a concludere nel senso che l’intera azione amministrativa nella specie sia stata unicamente e precipuamente finalizzata a realizzare una discriminazione razziale nei confronti delle comunità Rom.”

13 The ordinances 3776 and 3777 of 1 June 2009 relating to the regions of Piedmont and Veneto respectively give the delegated commissioners in those regions the same powers.

14 Article 1 (2) of ordinances 3676, 3677, and 3678 of 30 May 2008.

15 Law 241/1990, New norms in the field of administrative procedure and the right to access to administrative documents (Legge 241/1990, Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi).

16 These include Article 11, International Covenant on Economic, Social and Cultural Rights; Article 17, International Covenant on Civil and Political Rights; Article 31, Revised

European Social Charter; Article 8(1), European Convention on Human Rights.

17 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Article 11.1 of the Covenant), 20 May 1997, paras. 13 and 15 (hereafter UN Committee on Economic, Social and Cultural Rights, General Comment No. 7).

18 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7.

19 Article 2, International Covenant on Economic, Social and Cultural Rights; Articles 2 and 26, International Covenant on Civil and Political Rights; Article 13, European Convention on Human Rights; Article 41/2, EU Charter of Fundamental Rights.

20 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, European Convention on Human Rights, EU Directive 2000/43 (EU Race Directive) and Revised European Social Charter.

21 See for example the blog of the former Deputy Mayor of Milan, Riccardo De Corato Blog: "Rom De Corato ; 'Sgomberi non si fermano neanche a Pasqua, verso quota 500'", 25 April 2011; "Rom De Corato ; 'Smantellati 3 baraccopoli, superati i 500 sgomberi. Milano ha ridotto gli abusivi dell'80% in 4 anni'", 26 April 2011, <http://riccardodecoratoblog.net/2011/04/26/rom-de-corato-%E2%80%9Csmantellati-3-baraccopoli-superati-i-500-sgomberi-milano-ha-ridotto-abusivi-dell%E2%80%9980-in-4-anni-con-pisapia-la-citta-tornerebbe-all%E2%80%99emergenza-del-2007/>.

22 Although the closure had been announced to take place in June 2011, it was suddenly accelerated and implemented a few days before the first round of the local election, in a clear attempt to use the event as an opportunity to gain political support. As a consequence, about 50 families still living in the camp were forced to leave with a notice of just 90 minutes.

23 Concluding observations of the Committee on the Elimination of Racial Discrimination, Italy, 2008, CERD/C/ITA/CO/15, para 14; Advisory Committee on the Framework Convention for the Protection of National Minorities, Third opinion on Italy, 15 October 2010, page 22; European Commission against Racism and Intolerance, Second report on Italy, 22 June 2001, para 61.

24 Concluding observations of the Committee on the Elimination of Racial Discrimination, Italy, 2008, CERD/C/ITA/CO/15, paragraph 14.

25 See *The wrong answer: Italy's Nomad Plan violates the housing rights of Roma in Rome*, AI Index: EUR 30/001/2010.

26 "Tolerated" camps are settlements that were built irregularly on private or public land. They have usually existed for relatively long periods of time and the owners of the land do not threaten the community with eviction. In some cases the authorities provide some services to these camps, such as rubbish collection and transporting the children to school. The residents of these settlements have no security of tenure. Unauthorized camps are settlements that were built irregularly on private or public land and that are dismantled periodically. Such settlements are usually the most precarious, have no services and no security of tenure.

27 Representatives of the trade unions for social housing tenants report to Amnesty International in November 2011.

28 In the *Basic principles and guidelines on development-based evictions and displacement*, the importance of protecting women from forced evictions is emphasised: A/HRC/4/18, Annex

1, paragraph 26 (hereafter the *Basic principles*).

29 Fondazione Ismu, *Diciassettesimo Rapporto sulle migrazioni 2011* (Milano: Franco Angeli, 2011), p7.

30 Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p12 and 95. Romania, Albania, Morocco, China and Ukraine are the main countries of origin of migrants in a regular status.

31 Fondazione Ismu, *Diciassettesimo Rapporto sulle migrazioni 2011* (Milano: Franco Angeli, 2011), p35; Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p147.

32 Preamble, Decree-Law No. 92/2008 of 23 May 2008, "Urgent measures concerning public security", *Gazzetta ufficiale* No. 122 of 26 May 2008 (translation by Amnesty International). Decree-Law 92/2008 was converted into law and partially modified by Law No. 125/2008 of 24 July 2008, "Conversion into law, with modifications, of Decree-Law No. 92 of 23 May 2008, adopting urgent measures concerning public security", *Gazzetta ufficiale* No. 173 of 25 July 2008.

33 Comments by the Italian Government, Appendix to the Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008, Doc. CommDH (2008)18, 28 July 2008, p30.

34 Commissioner for Human Rights of the Council of Europe, Memorandum following his visit to Italy on 19-20 June 2008, Doc. CommDH (2008)18, 28 July 2008, para14.

35 UN Special Rapporteur on the right to education, Report to the Human Rights Council, Addendum 1, UN Doc. A/HRC/14/25/Add.1, 17 May 2010, para97. UN Special Rapporteur on the human rights of migrants, Report to the Human Rights Council, UN Doc. A/HRC/14/30/Add.1, 25 May 2010, para104.

36 Art. 1.16, Law No. 94/2009 of 15 July 2009, "Provisions concerning public security", *Gazzetta Ufficiale* No. 170 of 24 July 2009, amending Legislative Decree No. 286/1998 of 25 July 1998, "Consolidated text of the provisions concerning migration regulation and norms on the status of non-nationals", *Gazzetta ufficiale* No. 191 of 18 August 1998.

37 Committee on the Elimination of Racial Discrimination, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, UN Doc. A/60/18, 2005, pp98-108, par5(a).

38 In the Italian justice system, a *giudice di pace* (lit. justice of the peace) is legally trained, but not a professional judge.

39 Art. 1.17 of Law 94/2009, introducing Art. 20-bis, 20-ter and 32-bis of Legislative Decree No. 274/2000 of 28 August 2000, "Provisions about the criminal competence of the justice of the peace", *Gazzetta ufficiale* No. 234 of 6 October 2000.

40 Under Art. 35.5 of Legislative Decree No. 286/1998 of 25 July 1998, access to health services by irregular migrants "will not entail any kind of reporting to the authorities" of the individual's irregular migration status (reporting ban) ("Consolidated text of the provisions concerning migration regulation and norms on the status of foreigner nationals", *Gazzetta ufficiale* No. 191 of 18 August 1998). During the drafting of Law 94/2009, the Senate (Italian Parliament's higher chamber) decided to delete the 1998 provision banning medical personnel from reporting irregular migrants who access the health system. Such a decision sparked a campaign by health professional unions, which argued that the elimination of the reporting ban would violate the migrants' right to health. Law 94/2009, as finally adopted,

did not modify the 1998 reporting ban. In addition, it specified that a valid residence permit is not necessary to access “urgent or essential” health services. The situation remained confused, however, and the Italian government had to clarify later that the new legislation does not impose on medical personnel any obligation to denounce irregular migrants: Ministry of Interior, Circular No. 12/09, 27 November 2009.

41 Amnesty International, *Italy: All migrants must be protected against attacks and exploitation*, AI Index: EUR 30/003/2010, 12 January 2010.

42 Medici Senza Frontiere, *Una stagione all'inferno: Rapporto sulle condizioni degli immigrati impiegati in agricoltura nelle regioni del Sud Italia*, 2008.

43 For example: Fabrizio Gatti, “I was a slave in Puglia”, *L'Espresso*, 4 September 2006.

44 Confederazione General Italiana del Lavoro (GCIL), *Segnalazione al Comitato di Esperti per l'Applicazione delle Norme, OIL: Violazione delle Convenzioni 29 (1930) e 105 (1957) sul lavoro forzato*, 23 February 2010.

45 Emanuele Galossi and Maria Mora, *I lavoratori stranieri nel settore edile: III Rapporto IRES-FILLEA*, December 2008.

46 In the report on his mission to Italy (9-13 October 2006), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance condemned the “slavery-like conditions of migrants in the agricultural sector”: UN Doc. A/HRC/4/19/add.4, para63; see also para49-53.

47 During the last review of Italy, the Committee expressed concern at the ill-treatment and exploitation of irregular migrant workers, recommending that Italy “take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers”, Concluding observations of the Committee on the Elimination of Racial Discrimination, Italy, UN Doc. CERD/C/ITA/CO/15, 2008, para 17.

48 See for example: Fabrizio Gatti, “Campania, schiavi senza fine”, *L'Espresso*, 17 December 2010.

49 Article 9, Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (ILO Convention No. 143). Italy ratified the Convention on 23 June 1981.

50 ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143): Italy, in *Report to the International Labour Conference, 99th session, 2010*, p727.

51 ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Labour Inspection (Agriculture) Convention, 1969 (no. 129): Italy, in *Report to the International Labour Conference, 97th session, 2008*, p470. See also: Individual Observation concerning Labour Inspection Convention, 1947 (No. 81): Italy, *ibid.*, p469.

52 ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143): Italy, in *Report to the International Labour Conference, 99th session, 2010*, p727.

53 Article 603-bis of the Criminal Code, introduced by Article 12, Law No. 148, 14 September 2011, “Other urgent measures for financial stabilization and development”

(translation by Amnesty International).. The crime is punished with detention from five to eight years and with a fee ranging from 1,000 to 2,000 euros for each of the workers recruited.

54 Bill concerning measures to combat the exploitation of foreign workers, adopted by the Council of Ministers on 17 November 2006.

55 Article 1.22.g of Law 94/2009, modifying Article 6.2 of Legislative Decree 286/1998.

56 UN Special Rapporteur on the right to education, Report to the Human Rights Council, Addendum 1, UN Doc. A/HRC/14/25/Add.1, 17 May 2010, para106. UN Special Rapporteur on the human rights of migrants, Report to the Human Rights Council, UN Doc. A/HRC/14/30/Add.1, 25 May 2010, para113.

57 Italian government, letter dated 26 March 2010, quoted in UN Special Rapporteur on the right to education, Report to the Human Rights Council, Addendum 1, UN Doc. A/HRC/14/25/Add.1, 17 May 2010, para115.

58 Article 1.20, Law 94/2009.

59 UN Special Rapporteur on the right to education, Report to the Human Rights Council, Addendum 1, UN Doc. A/HRC/14/25/Add.1, 17 May 2010, para104. UN Special Rapporteur on the human rights of migrants, Report to the Human Rights Council, UN Doc. A/HRC/14/30/Add.1, 25 May 2010, para111.

60 Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on his mission to Japan (3-11 July 2005), UN Doc. E/CN.4/2006/16/Add.2, 24 January 2006, para81.

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