

EXPLOITED LABOUR TWO YEARS ON

**THE 'ROSARNO LAW' FAILS
TO PROTECT MIGRANTS
EXPLOITED IN THE
AGRICULTURAL SECTOR IN
ITALY**

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

LABOUR EXPLOITATION OF AGRICULTURAL MIGRANT WORKERS IN ITALY

In January 2010, violent clashes between local residents and migrant workers in Rosarno, a small town in the Calabria region, brought, for the first time, the issue of the migrants' living and working conditions to the Italian public's attention. The economy of the area around Rosarno mainly revolves around agriculture, in particular citrus fruits. At the beginning of the picking season, hundreds of migrant workers gather in the area to work as agricultural labourers. When the clashes erupted, migrant workers in the Rosarno area were typically earning about 25 euros for a day's work of 8-10 hours and living in disused buildings and makeshift shelters without running water, electricity or heating.

In 2012 Amnesty International conducted research on the human rights situation of migrant workers from sub-Saharan Africa, North Africa and Asia, employed in low-paid, often seasonal or temporary jobs, mostly in the agricultural sector, focusing in the areas of Latina and Caserta. The organization first exposed their plight in a report published in December 2012.¹

Amnesty International's research found evidence of widespread labour exploitation of migrant workers in the agricultural sector, including instances of severe labour exploitation. The organization documented, in particular: wages below the minimum wage agreed between unions and employers' organizations, arbitrary wage/salary reductions, delays or non-payment of wages and long working hours.

Further, the research findings disclosed a causal link between labour exploitation of migrant workers and some measures adopted by the Italian government with the stated view of controlling and regulating migration flows. Amnesty International expressed concern that Italian migration policy increased the risk faced by migrant workers, especially those in an irregular situation, of being subjected to labour exploitation.

THE PROBLEM: FAILURE TO ENSURE JUSTICE FOR VICTIMS OF LABOUR EXPLOITATION

Under international law, Italy has the obligation to put in place an effective system to respect, protect and fulfil the human rights of all migrant workers, including guaranteeing their enforcement. In compliance with several international instruments Italy is bound by (see Box below), as well as its own domestic legislation,² migrant workers should be able to file a complaint when a violation of their rights occurs, regardless of their residence status, without fearing negative consequences.

THE RIGHT TO SEEK AND OBTAIN AN EFFECTIVE REMEDY FOR HUMAN RIGHTS VIOLATIONS

The right to seek and obtain an effective remedy for human rights violations is recognised under Article 2(3) and 14 of the International Covenant on Civil and Political Rights (ICCPR), Article 13 of the European Convention on Human Rights (ECHR), in conjunction with other Articles, and article 47 of the EU Fundamental Rights Charter on effective remedies that states that:

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal (...)."³

Referring specifically to violations of the right to work, the UN Committee on Economic, Social and Cultural Rights clarified:

"Any person or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level. At the national level trade unions and human rights commissions should play an important role in defending the right to work. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition."⁴

Migrants who suffer human rights violations or abuses, both regular and irregular, should have access to justice and be able to report and/or file legal complaints without fear of deportation or repatriation. The UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recommended that:

"States should establish effective and accessible channels which would allow all migrant workers to lodge complaints for violations of their rights without retaliation against them on the ground that they may be in an irregular situation."⁵

Under the International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143), which Italy ratified in 1981, 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.⁶ This includes the possibility to claim such rights before a competent body.⁷

In its December 2012 report Amnesty International found that Italy's legislative framework creates obstacles to access to justice for migrant workers who are victims of severe forms of labour exploitation and offers them inadequate protection. In particular, measures aimed at implementing Italian migration policy, such as criminalising irregular migration and charging labour inspectors with migration control enforcement, create obstacles to the enjoyment of the right of migrant workers in an irregular situation to seek and obtain a remedy for violations of their human rights.

PROTECTING MIGRANT WORKERS WHO SUFFER LABOUR EXPLOITATION: THE EMPLOYERS' SANCTIONS DIRECTIVE AND THE ROSARNO LAW

In 2012 the Committee on the Elimination of Racial Discrimination expressed concern at 'the lack of appropriate legal protection for migrants, in particular

against exploitation or abusive working conditions' and recommended Italy to

'amend its legislation to allow undocumented migrants to claim rights arising out of previous employment and to file complaints irrespective of immigration status.'⁸

In July 2012 Italy adopted Legislative Decree No. 109, known as the Rosarno Law, introducing some protection measures for irregular migrant workers victims of labour exploitation.⁹ The Rosarno Law was adopted in order to implement EU Directive 2009/52/EC (Employers' Sanctions Directive)¹⁰ and stop the procedure opened by the European Commission against Italy for its failure to transpose it within the given deadline (infringement procedure).¹¹

Noting the importance of the EU Employers' Sanctions Directive, the UN Special Rapporteur on the human rights of migrants, François Crépeau, commented:

'Although this [Directive] has been transposed into national law through Legislative Decree 109/2012, Italy must strive to ensure its full implementation, including effectively sanctioning Italian employers who abuse the vulnerability of migrants by paying them low or exploitative wages and forcing them to work in dirty, difficult or dangerous conditions'.¹²

Already in December 2012 Amnesty International pointed out some of the serious shortcomings of the Rosarno Law and severely called into question its real protective effect on the rights of irregular migrant workers.¹³ At that time, however, the Law had been in force for only six months and its practical implementation could be evaluated only partially. What follows provides a detailed analysis of the 'Rosarno Law', as well as of the impact it has had on the protection of the rights of irregular migrant workers during the first 2 years of its implementation.

In this paper, Amnesty International expresses concern that Legislative decree 109/2012, generally referred to as the Rosarno Law, fails to provide effective protection to the agricultural migrant workers suffering labour exploitation of in Italy.

METHODOLOGY

This paper is based on data collected from official sources and research missions to Caserta (Campania region), the areas around Latina (Lazio region) and Rosarno (Calabria region), as well as in meetings with national authorities in Rome, conducted in October-November 2013.¹⁴

Amnesty International met with several representatives of national institutions involved in the enforcement of the Rosarno Law in Rome, Latina, Caserta, Palmi and Reggio Calabria (Office of the Prosecutor, *Questura*). The interviews with representatives of national institutions focused on how the Rosarno Law had been

implemented since its entry into force, how many residence permit were granted under the Law, and which challenges, if any, the institutions faced in its application.

Amnesty International also met the National Office against Racial Discrimination (UNAR, *Ufficio Nazionale Antidiscriminazioni Razziali*), the Office of the National Anti-Mafia Prosecutor (*Direzione Nazionale Antimafia*), national workers' unions such as FLAI (*Federazione Lavoratori AgroIndustria*, Federation of workers of the agricultural industry) and CGIL (*Confederazione Generale Italiana del Lavoro*, Italian General Confederation of workers) and NGOs providing assistance to migrants (Africalabria, Centro Sociale Ex-Canapificio, Emergency).

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THE ROSARNO LAW PUT TO THE TEST

THE EU EMPLOYERS' SANCTIONS DIRECTIVE

In June 2009, 'in order to fight illegal immigration', the European Union adopted a Directive prohibiting the employment of non-EU migrant workers in an irregular situation and indicating minimum standards on sanctions and other measures against their employers (the Employers' Sanctions Directive, 2009/52/EC).¹⁵

Overall, the Directive assumes that 'the 'possibility of obtaining work in the EU without the required legal status' is a key pull factor of irregular migration into the EU, and that therefore action against irregular migration should include measures to counter that pull factor.¹⁶ The Directive obliges EU member states to prohibit the employment of non-EU irregular migrant workers under their domestic legislation¹⁷ and to impose on the employer of irregular migrants a range of financial, administrative and, in some cases, criminal sanctions and measures. Administrative sanctions and other measures include: the exclusion from public subsidies, including EU funding; the exclusion from participation in public contracts; the closure of the work establishments or the withdrawal of necessary licenses.¹⁸

The employer who is found having employed irregular migrants must make back payments of any outstanding salary (at least at minimum wage level), taxes and social security contributions.¹⁹ To this end, EU member states must enact mechanism to ensure that migrant workers are able to file a civil claim against their employer - and eventually enforce a judgment and receive the back payments - even in cases in which they have (or have been) returned to their country of origin.²⁰ More generally, EU member States must ensure that there are safe channels for migrant workers to lodge complaints against their employers, directly or through a third party (such as trade unions or civil society organizations).²¹

Under the Directive, criminal sanctions must be imposed in specific circumstances, including when: a significant number of irregular migrants are employed simultaneously; the migrant worker is a victim of trafficking or an illegally employed 'minor'; or the migrants work in 'particularly exploitative working conditions'.²²

'Particularly exploitative working conditions under the EU Employers' Sanctions Directive'

The Directive provides a broad definition of 'particularly exploitative working conditions', which occur

'where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity [sic]'.²³

'Particularly exploitative working conditions' would include, for example, those resulting from gender-based or other discrimination.²⁴

'Minor' migrant workers and migrants who work in particularly exploitative conditions may be granted temporary residence permits, linked to the duration of the criminal proceedings, under arrangements comparable to those applicable to

victims of trafficking.²⁵ These permits could be renewed and extended until the migrant worker has received any back payments due.²⁶

Despite these protective provisions, the Directive focuses on the irregular status of migrant workers rather than their labour rights and the possible abuses of these rights by the employer.²⁷ Article 14 is of particular concern, as it imposes on EU member states an obligation to conduct inspections to control the employment of irregular migrants. Migration control actions by labour inspectors are contrary to international labour standards.²⁸

THE ROSARNO LAW

Like the Employers' Sanctions Directive, the Rosarno Law prioritizes the enforcement of immigration laws over the duty to identify and effectively address even serious forms of labour exploitation.

Before the adoption of the Rosarno Law, Italian legislation already prohibited the employment of irregular migrants, sanctioning employers with imprisonment (from six months up to three years) and a fine of 5.000 euros per irregular migrant worker employed.²⁹ Pursuant to the Directive, the Rosarno Law added to these sanctions the obligation for the employer to pay for the worker's repatriation.³⁰

The Law also introduced three cases of 'particularly exploitative working conditions' (*condizioni lavorative di particolare sfruttamento*) as aggravating factors to the crime of employing irregular migrant workers (as examined below).³¹ In these cases, it provides for the granting of a residence permit for 'humanitarian reason' to irregular migrant workers who have reported their employer and cooperate in the criminal proceedings against him/her.³² The new regime of residence permits for humanitarian reasons, the most important protection measure under the Law, will be discussed in detail below.

In a number of areas, the Rosarno Law either omitted to implement key provisions of the Employers' Sanction Directive, or significantly limited the scope of their application. These serious shortcomings, adding to the shortcomings of the Directive itself, fundamentally undermine the Law's effectiveness in providing protection to migrant workers who suffer labour exploitation.

First, the Rosarno Law failed to adopt effective procedures and mechanisms to ensure that migrant workers receive back payment of any outstanding salary from their employer - even when they have (or have been) returned to their country of origin.³³ In this respect, the Rosarno Law failed to establish 'safe channels' to allow irregular migrant workers to lodge complaints against their employers, either directly or through third parties such as trade unions or other civil society organisations.³⁴

Second, the Rosarno Law failed to introduce certain additional administrative sanctions against employers of irregular migrant workers, such as the exclusion from public subsidies, including EU funding; the exclusion from participation in a public

contract; the recovery of some or all public benefits; the temporary or permanent closure of the work establishments; or the withdrawal of necessary business licences.³⁵

Finally, the Rosarno Law gave labour inspectors the responsibility to detect 'the employment of illegally staying third-country nationals',³⁶ increasing their role in migration enforcement in the workplace, a measure contrary to international labour standards.³⁷

RESIDENCE PERMITS FOR HUMANITARIAN REASONS UNDER THE ROSARNO LAW

Under the Rosarno Law, residence permits for humanitarian reasons can be granted to irregular migrant workers under the following circumstances:

- 1) The migrant worker is subjected to 'particularly exploitative working conditions' (*condizioni lavorative di particolare sfruttamento*) (see below); and
- 2) The migrant worker reports her/his abusive employer to the authorities; and
- 3) The migrant worker cooperates in the criminal proceedings against the employer; and
- 4) The Prosecutor responsible for the criminal proceedings agrees with the granting of a residence permit.³⁸

THE NOTION OF 'PARTICULARLY EXPLOITATIVE WORKING CONDITIONS'

The Rosarno Law defines 'particularly exploitative working conditions' as one of the following three circumstances:

- (a) The employment of more than three irregular migrant workers;
- (b) The employment of 'minors below working age';
- (c) Other particularly exploitative working conditions, as described in paragraph 3 of Article 603-bis of the Criminal Code. That provision adds to the first two cases the fact of 'exposing the workers to situations of grave danger, having regard to the characteristics of the work performed and the working conditions'.³⁹

The notion of 'particularly exploitative working conditions' under Italian legislation is narrower than the one under the Employers' Sanction Directive, as the Rosarno Law failed to include both the cases of labour exploitation on the ground of discrimination and the hypothesis of "a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity" as indicated

by the directive in its article 2, letter i.

Additionally, the notion of 'particularly exploitative working conditions' under the Rosarno Law does not seem to be harmonised with the notion of 'labour exploitation' in paragraph 2 of Article 603-bis of the Criminal Code (crime of unlawful gang-mastering and labour exploitation, *intermediazione illecita e sfruttamento del lavoro*), which refers to the following four factors:

- '1) Systematically paying the workers in a way clearly not in line with national collective agreements, or in any case disproportionate to the quantity and quality of the work done;
- 2) Systematically violating laws and regulations on working hours, weekly rest days, compulsory and annual leave;
- 3) Violating laws and regulations on safety and hygiene in the workplace, in such a way as to expose the worker to danger to his/her health, safety or personal integrity;
- 4) Subjecting the worker to particularly degrading working conditions, supervision methods, or housing conditions.¹⁴⁰

Amnesty International notes with concern that the restrictive definition of 'particularly exploitative working conditions' under the Rosarno Law risks jeopardizing the whole protection system designed by the Directive, as it unduly excludes from the possibility of being granted a residence permit migrant workers who would be entitled to a permit under the Directive.

ADDITIONAL REQUIREMENTS

In order to be granted a residence permit for humanitarian reasons, the migrant workers victim of exploitation are required under the Rosarno Law to: (a) report their employer to the authorities; and (b) cooperate in the criminal proceedings against them.⁴¹

These conditions are not included in the Directive, which requires only that the migrant workers be 'involved' in the criminal proceedings. What is more, these conditions are not in line with the Directive's requirement that the residence permit be granted 'under arrangements comparable to' those applicable to victims of trafficking.⁴² It is a widely accepted principle, recognised inter alia in EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and the Council of Europe Convention against Trafficking in Human Beings, ratified by Italy, that assistance and support for victims of trafficking should not be conditional on their cooperation in criminal proceedings.⁴³

The Italian government itself admitted that the new residence permits under the Rosarno Law would be granted in a limited number of cases, as their criteria are

even more restrictive than the criteria for the granting of residence permits to victims of trafficking.⁴⁴

Amnesty International expresses concern that restrictive requirements for the granting of a residence permit fundamentally undermine the effectiveness of the Rosarno Law in ensuring protection and justice for victims of labour exploitation. Because of such restrictive requirements, many migrant victims of labour exploitation may not be eligible for residence permits for humanitarian reasons and would as such be unable to stay in the country to benefit from available remedies.

THE ROSARNO LAW AND THE CRIME OF IRREGULAR MIGRATION

'The legislation creates marginality, breeding ground for labour exploitation'
Mario Palazzi, Vice-Prosecutor, Office of the Public Prosecutor, Rome.⁴⁵

In May 2008 the Italian government announced several emergency legislative measures, known as the Security Package (*pacchetto sicurezza*), which, the government stated, were intended to fight 'widespread illegality linked to illegal migration and organized crime'.⁴⁶ Among other measures, the Security Package introduced the criminal offence of 'illegal entry and stay within the territory of the state', capable of attracting a monetary penalty of 5,000-10,000 euros for those found guilty.⁴⁷

Given that 'illegal entry and stay' is a crime, irregular migration status automatically triggers the requirement for any public officer (including all civil servants, local authority employees, teachers and any other person in charge of a public service) to report all suspected criminal acts to the police or judicial authorities.⁴⁸ Any irregular migrant wanting to report abuse, including labour exploitation, faces the risk of exposing himself or herself to the real danger of being reported, charged with the offence of 'irregular entry or stay', and even detained and ultimately expelled. Many irregular migrants told Amnesty International in 2012 that they were afraid to contact the authorities and avoided seeking legal remedies, even where they were entitled to them.⁴⁹

This situation does not seem to have changed after the adoption of the Rosarno Law. In 2013, NGOs and union representatives continued reporting that the identification as irregular migrants of the few workers who decide to go to the police and file a complaint against their employers is a common occurrence.⁵⁰

The difficulties posed by the current system significantly affect access to justice for migrant workers. The 2013 UNAR statistical report flags workers' unwillingness to file complaints against their employer when it comes to labour exploitation: according to the statistical data gathered by UNAR, the percentage of direct reports

(filed by the workers), concerning violations of their rights is lower than the indirect ones (filed by law enforcement officials, but also by civil society organizations providing assistance to migrants).⁵¹

The contradiction between the criminalization of irregular migration and the right to seek and obtain justice for human rights violations is particularly evident in the requirement, imposed by the Rosarno Law, to cooperate in criminal proceedings in order for irregular migrant workers victims of labour exploitation to obtain a residence permit for humanitarian reasons. Prosecution authorities pointed out to Amnesty International the practical difficulty of maintaining separated two different –and opposed– positions, as they would listen to irregular migrant workers as witnesses and victims of a crime, while, at the same time, prosecuting them for irregular migration.⁵²

Between 2008 and 2014, Amnesty International repeatedly called upon the Italian government to repeal the provision criminalizing 'irregular entry and stay', which creates obstacles to irregular migrants' access to justice and is therefore inconsistent with Italy's obligation to guarantee a practical and effective remedy for human rights violations. The organisation notes that in April 2014 the Italian Parliament adopted Law 67/2014, which delegates the government to abrogate the crime of 'illegal entry and stay', turning it into an administrative offence.⁵³ The government has 18 months to comply with the Law.

RESIDENCE PERMITS UNDER THE ROSARNO LAW IN PRACTICE

In September 2013, Amnesty International wrote to the Italian Ministry of Interior requesting official data about the total number of residence permits for humanitarian reasons granted to migrant workers under the Rosarno Law. Amnesty International also requested the same data from the Carabinieri's central command for labour protection (*Comando nazionale tutela del lavoro*). Notwithstanding AI's best efforts to retrieve data, these are not publicly available.

As official data are unavailable, a quantitative analysis on the effectivity of the Rosarno Law is currently impossible. However, testimonies collected by Amnesty International from the Questura and the Prosecutor's office in the areas of Palmi, Reggio Calabria, Caserta, Latina and Roma⁵⁴ indicate that an extremely limited number of residence permits for humanitarian reasons has been issued under the Rosarno Law since its entry into force. In the Calabria region, no residence permits had been granted by the Office of the Prosecutor in Palmi between the entry into force of the Rosarno Law and October 2013; one had been issued by the Questura of Reggio Calabria.⁵⁵ In the Campania region, the Questura of Caserta did not register any quantitative impact of the Rosarno Law on the number of permits issued as they received only a few applications for residence permit on the ground of labour exploitation between July 2012 and October 2013.⁵⁶ In the Lazio region, the Head Prosecutor of Latina did not receive any request of residence permit under the Rosarno Law between July 2012 and October 2013.⁵⁷ Such data have been confirmed as current by the Office of the Prosecutor in Reggio Calabria⁵⁸, Rome⁵⁹, Latina⁶⁰ and by the Questura of Caserta⁶¹, following Amnesty International request of updates in September 2014.

Even considering the relatively recent entry into force of the Rosarno Law, these reports seriously call into question its effectiveness and ability to address the main factors that hamper irregular migrant workers' access to justice.

THE OBSTACLES

During the course of its research, Amnesty International registered several shortcomings in the concrete applicability of the Rosarno Law, deriving from the restrictive nature of the provisions providing for the granting of a permit.

First, the instability and precariousness of the work relation, typical of the agricultural sector in Southern Italy, especially during picking seasons, makes it difficult for an exploited migrant worker to identify his/her employer. Joshua (not his real name), a migrant worker from Ghana, told Amnesty International:

'Employers change every day. Who am I going to report? And how am I going to support my claim?'.⁶²

It is unusual for irregular migrant workers in Southern Italy to know their employer's name and address, as they often change employer every day and/or find work through a *caporale* (unlawful gangmaster). Unstable work relations are considered to be a factor leading to exploitation.⁶³ The requirement under the Rosarno Law to report the abusive employer to the authorities, therefore, is unrealistic and hinders safe access to protection, precisely in those situations where a migrant worker is more vulnerable to labour exploitation.

Second, the requirement to cooperate in the criminal proceedings against the employer fails to take into account the mobility intrinsic in migrant agricultural work. Many migrant agricultural workers follow the harvesting and picking seasons around the country: they may work in Calabria in winter, during the citrus-picking season; in Apulia in summer, during the tomato and watermelon-picking season; elsewhere during the other months of the year. In light of the average length of criminal proceedings, it is often impossible for migrant workers to remain in one place long enough to cooperate in them.

Finally, the high threshold of the definition of 'particularly exploitative working conditions' under the Rosarno law makes it extremely difficult for the migrant workers to produce proofs of the exploitation. How to substantiate the claim that not only the employer violated the law, but he also exposed workers to an actual danger? This is particularly problematic in a context where labour inspections, which could provide the necessary evidence to sustain a claim, are few and ineffective.⁶⁴

CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

Since Amnesty International published its first report on labour exploitation of agricultural migrant workers in the agricultural sector in Italy, the Italian authorities have failed to effectively address the problem and to ensure that victims of labour exploitation have access to justice and can obtain full remedy.

At the time of Amnesty International's visits in Rosarno, Latina and Caserta in October 2013, migrant workers were still facing exploitative working conditions. The fear of losing their source of income and being detained and deported continues to prevent many of them from seeking justice.

The right to access justice itself continues being significantly undermined by the Italian legal framework. The crime of 'illegal entry and stay' creates a significant obstacle to access to justice for irregular migrants. The threat of being identified as irregular and consequently deported not only worsens the migrants' position of vulnerability vis-à-vis their employers, but it also seriously compromises the effectiveness of any measure intended to address the exploitation they suffer. At the time of writing, the Italian government had not yet complied with Law 67/2014, which delegates it to abrogate the crime of 'illegal entry and stay', turning it into an administrative offence.

The entry into force of the Rosarno Law did not significantly affect or address the problem of labour exploitation in Italy. The new system of residence permits for victims of 'particularly exploitative working conditions' proved to be largely ineffective, as confirmed by the extremely low rate of its application. Even labour inspectors, whose primary duty should be to ensure the protection of workers, have become instruments against 'illegal immigration', in stark contrast with the relevant international obligations binding Italy.

In conclusion, Italy's restrictive implementation of the EU Employers' Sanctions Directive, along with its failure to amend its migration policy and repeal the crime of 'illegal entry and stay', pose a serious threat to the full enjoyment of the human rights of migrants in an irregular situation. As of yet, the Rosarno Law seems to be another lost opportunity to take the necessary steps to address more comprehensively the serious violations of the rights of migrants in the country.

RECOMMENDATIONS:

Italian authorities should:

- undertake all the necessary steps to respect, protect and fulfil the human rights of migrant workers, irrespective of their migration status, in compliance with the international and regional obligations they are bound by;

To ensure access to justice for irregular migrant workers who suffer labour exploitation:

- Implement Law 67/2014 without delay and abrogate the crime of "illegal entry and stay";
- implement the ILO Committee of Experts request 'to take the necessary measures in order to re-establish labour inspectors in their duties' as defined by the Labour Inspection Convention n. 81, i.e. to protect workers, not to enforce immigration law;⁶⁵
- provide legal assistance and support to migrant workers in order to facilitate their access to justice;

To fully implement the Employers' Sanctions Directive:

- enact procedures and mechanisms to ensure that irregular migrant workers can effectively and safely introduce a claim against their employer for any outstanding remuneration, and eventually enforce a judgment, including in cases in which they have, or have been, returned;
- revise the requirements under which the residence permit for victims of 'particularly exploitative conditions' is granted.

¹ Amnesty International, *Exploited Labour: Migrant workers In Italy's agricultural sector* (Index: EUR 30/020/2012), December 2012, pp. 12-20
<http://www.amnesty.org/en/library/info/EUR30/020/2012>

² "Allo straniero è riconosciuta parità di trattamento con il cittadino relativamente alla tutela giurisdizionale dei diritti e degli interessi legittimi, nei rapporti con la pubblica amministrazione e nell'accesso ai pubblici servizi, nei limiti e nei modi previsti dalla legge." Art. 2.5, Decreto legislativo 25 luglio 1998, n. 286.

³ Article 47 of the Charter of the Fundamental Rights of the European Union, 2000/C 364/01, legally binding on the European Union since the entry into force of the Treaty of Lisbon, in December 2009.

⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, 6 February 2006, para48.

⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Contribution by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to the High-Level Dialogue on Migration and Development of the General Assembly, UN Doc. A/61/120, par15(f).

⁶ 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.

⁷ See also: ILO Migrant Workers Recommendation, 1975 (No. 151), para34.

⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination, Italy, UN Doc. CERD/C/ITA/CO/16-18, 9 March 2012, para23.

⁹ Legislative decree No. 109 of 16 July 2012, (Rosarno Law). Transposition of the Directive 2009/52/CE of the European Parliament and of the Council 18 June 2009 implementing the Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals.

¹⁰ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals (Employers' Sanctions Directive).

¹¹ *Relazione illustrativa*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012,
http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0466_F001.pdf&leg=XVI.

¹² Report by the Special Rapporteur on the human rights of migrants, François Crépeau, Addendum: Mission to Italy (29 September–8 October 2012), UN Doc. A/HRC/23/46/Add.3, 30 April 2013, para87,
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-46-Add3_en.pdf

¹³ Amnesty International, *Exploited Labour: Migrant workers In Italy's agricultural sector* (Index: EUR 30/020/2012), December 2012, pp. 35-36.

¹⁴ Interviews in Rome and Caserta were held on 25 October 2013; in Latina on 28 October 2013; in Rosarno and other towns in Calabria from 28 to 31 October 2013. Pontinia, Sabaudia and Bella Farnia were visited on 8 of November 2013.

¹⁵ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally

staying third-country nationals (Employers' Sanctions Directive), Article 1.

¹⁶ Considerandum 2, *ibidem*.

¹⁷ *Ibidem*, Article 3.1.

¹⁸ *Ibidem*, Articles 5 and 7.

¹⁹ Where appropriate, employers should pay any cost arising from sending back payments to said country. Article 6.1, *ibidem*.

²⁰ Article 6.2-4, *ibidem*.

²¹ Article 13, *ibidem*.

²² *Ibidem*, Article 9.1.

²³ Article 2.i, *ibidem* "Condizioni.

²⁴ *Ibidem*.

²⁵ Article 13.4, *ibidem*.

²⁶ Article 6.5 and article 13.4, *ibidem*.

²⁷ ENAR, EWL, PICUM and SOLIDAR, 'Employers' Sanction Directive: Migrant workers, not employers, pay the price of their exploitation', Joint statement, 4 February 2009, http://picum.org/picum.org/uploads/file/Joint_Statement_Employer_Sanctions_Directive_4_Feb_2009.pdf. N. Flamigni, 'Europa - Direttiva sanzioni: il prezzo più alto lo pagano i migranti', 5 March 2009, Melting Pot. http://www.meltingpot.org/Europa-Direttiva-sanzioni-il-prezzo-piu-alto-lo-pagano-i.html#.VD-GZ_I_sv5

²⁸ The main focus of labour inspectors should be the enforcement of the 'legal provisions relating to conditions of work and the protection of workers', not the enforcement of migration law. Article 6, Labour Inspection (Agriculture) Convention, 1969 (No. 129), ratified by Italy with Law 157/1981; Article 3, Labour Inspection Convention, 1947 (No. 81), ratified by Italy with Law 1305/1952.

²⁹ Article 22.12, Legislative decree 286/98 (Testo Unico sull'Immigrazione, Consolidated Act on Immigration).

³⁰ Article 1.1.b of the Rosarno Law, introducing Article 22.12-ter of Legislative decree 286/98.

³¹ Article 1.1.b of the Rosarno Law, introducing Article 22.12-bis of Legislative decree 286/98.

³² Article 1.1.b of the Rosarno Law, introducing Article 22.12-quarter of Legislative Decree 286/1998.

³³ Article 6.2-4, Employers' Sanction Directive. Under the Rosarno Law, relevant Ministries would be responsible for ensuring that irregular migrant workers receive the necessary information. However, the provision of information is only one of the measures required under the Directive. See Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, pp. 7-8.

³⁴ Article 13, Employers' Sanctions Directive.

³⁵ Article 7, Employers' Sanctions Directive. For more extensive comments on this point see: ASGI, *Osservazioni allo schema di Decreto Legislativo recante attuazione della Direttiva 2009/52/CE che introduce norme minime relative a sanzioni e a provvedimenti nei confronti di datori di lavoro che impiegano cittadini di paesi terzi il cui soggiorno è irregolare*, 14 May 2012, p. 3.

³⁶ Article 4, Rosarno Law.

³⁷ See Article 6, Labour Inspection (Agriculture) Convention, 1969 (No. 129), ratified by Italy with Law 157/1981; Article 3, Labour Inspection Convention, 1947 (No. 81), ratified by Italy with Law 1305/1952.

³⁸ Article 1.1.b of the Rosarno Law, introducing Article 22.12-quarter of Legislative Decree 286/1998.

³⁹ Article 603-bis.3, Criminal Code.

⁴⁰ Article 603-bis.2, Criminal Code.

⁴¹ Article 1.1.b, Rosarno Law, introducing Article 22.12-quarter of the Consolidated Law on Immigration.

⁴² Article 13.4, Employers' Sanctions Directive.

⁴³ Article 11.3, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Article 12.6, Council of Europe Convention against Trafficking in Human Beings, ratified by Italy on 29 November 2010.

⁴⁴ *Relazione tecnica*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012.

⁴⁵ Amnesty International's interview with Mario Palazzi, Vice-Prosecutor, Office of the Public Prosecutor, Rome, 25 October 2013.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Art. 361 and 362 of the Italian Criminal Code. The only significant exception to this statutory duty applies to doctors and other health professionals.

⁴⁹ Amnesty International, *Exploited Labour. Migrant workers In Italy's agricultural sector* (Index: EUR 30/020/2012), December 2012, pp. 30-31.

⁵⁰ Amnesty International's interview with Gian Luca Castaldi, Centro Sociale Ex Canapificio, Caserta, (Campania), 25 October 2013. Amnesty International's interview with Roberto Iovino, Giovanni Gioia, Flai-CGIL, Latina (Lazio), 28 October 2013.

⁵¹ UNAR (Ufficio Nazionale Antidiscriminazioni Razziali), *Dalle discriminazioni ai diritti. Dossier Statistico 2013*, p. 284.

⁵² Amnesty International's interview with Giuseppe Creazzo, Chief Prosecutor, Palmi (Calabria), 29 October 2013.

⁵³ Article 2.3(b), Law No. 67 of 28 April 2014, *Deleghe al Governo in materia di pene detentive non carcerarie e di riforma del sistema sanzionatorio. Disposizioni in materia di sospensione del procedimento con messa alla prova e nei confronti degli irreperibili*, *Gazzetta Ufficiale* No. 100 of 2 May 2014.

⁵⁴ Amnesty International's interview with Leonardo Frisani, Vice-Prosecutor, Office of the Public Prosecutor, Rome, 25 October 2013.

⁵⁵ Amnesty International's interview with Federico Cafiero de Raho, Prosecutor, Reggio Calabria (Calabria), 30 October 2013.

⁵⁶ Amnesty International's interview with Enzo Raimo, Questore vicario, Caserta (Campania), 25 October 2013.

⁵⁷ Amnesty International's interview with Andrea de Gasperis, Prosecutor, Latina, (Lazio), 28 October 2013.

⁵⁸ Data confirmed by the Office of the Public Prosecutor, Reggio Calabria (Calabria), 14 October 2014, following Amnesty International request of updates of the 26 september 2014.

⁵⁹ Data confirmed by the Office of the Public Prosecutor, Rome (Lazio), 9 October 2014 following Amnesty International request of updates of the 26 september 2014.

⁶⁰ Data confirmed by the Office of the Public Prosecutor, Latina (Lazio), 13 October 2014 following Amnesty International request of updates of the 26 september 2014.

⁶¹ Data confirmed by the Questura of Caserta (Campania), 29 Septemebr 2014 following Amnesty International request of updates of the 26 september 2014.

⁶² Amnesty International's interview with Joshua (not his real name), Rosarno area, 31 October 2013.

⁶³ See G. Ferrucci, E. Galossi, "Il mercato del lavoro immigrato negli anni della crisi", Osservatorio sull'immigrazione Ires-CGIL, January 2013. M. Cicerchia, P. Pallara, "Gli immigrati nell'agricoltura italiana", INEA (Istituto Nazionale di Economia Agraria), 2010, p. 26.

⁶⁴ On labour inspections see: Amnesty International, *Exploited Labour. Migrant workers In Italy's agricultural sector* (Index: EUR 30/020/2012), December 2012, pp. 32-34.

⁶⁵ See p. 632, Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC.102/III(1A). http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174843.pdf

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