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**Italy:  
The witch-hunt against  
Roma people must end**



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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM



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4 Italy: The witch-hunt against Roma people must end

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## Introduction

The Ministry of Interior has estimated that there are approximately 140,000 – 170,000 Romani persons in Italy. Around half of these are Italian citizens while the other half are stateless or in some cases citizens of other, primarily eastern European, countries. Romani persons often have difficulties in obtaining citizenship in Italy. This is because they cannot prove the length of their residency in Italy since they live irregularly, with no residency permits and without any recognized address or rental contracts that could prove how long they have been in the country. This problem is aggravated by the fact that those Romani persons who approach the authorities to get a residence permit (*permesso di soggiorno*) are often refused one even if they have proof of residence. According to law 91/1992, European Union (EU) citizens need to be able to prove that they have lived in Italy for four years before they can be considered for citizenship. The corresponding figure for persons who are not EU citizens is 10 years.

“The European Commission rejects the idea that all Roma are criminals. European Union countries have to be role models in the fight against racism and xenophobia”

*Vladimir Spidla, EU Commissioner for Employment, Social Affairs and Equal Opportunities, in a speech addressing the recent attacks against Roma communities in Italy.*

Amnesty International is deeply concerned about actions and statements made by the Italian authorities targeting the Roma community. These actions include forced evictions of Romani communities, anti-Roma statements by officials and politicians and proposals to take the fingerprints of all Roma, including children, as part of a census of Romani settlements. Mayors of various cities in Italy have also signed ‘Security Pacts’, with the aim of addressing security threats, including in some cases those reportedly posed by the presence of Roma communities in these cities. Amnesty International believes some of these measures to be unnecessary, disproportionate, stigmatizing and in many cases in violation of Italy’s international and regional human rights obligations. Amnesty International is extremely concerned that the presence of Roma communities in cities is being identified as a ‘security’ threat, at plans to move Roma living in settlements to segregated and isolated camps, and is further concerned that Italian politicians and media have over the past years engaged in a an

aggressive and stigmatizing rhetoric against Roma, creating an atmosphere in which vigilante style attacks against Romani settlements and people are becoming increasingly accepted, and frequent.

The Italian authorities have also introduced and proposed a number of legislative measures in the name of “security”. Among the areas addressed are issues pertaining to irregular migrants, as such people are perceived by the authorities to contribute to high levels of crime in Italy. As many Romani persons do not have Italian residency papers, they are *de facto* treated as irregular migrants and these legislative measures thus affect them – hence reference to these measures in this briefing.

The recent actions taken by the Italian authorities occur against a backdrop of substantive criticism from international human rights bodies, including the United Nations (UN) and the Council of Europe, over the past years for its treatment of Roma. The Italian authorities have failed to implement the recommendations of these bodies and instead taken some measures, mentioned above and described in detail in this briefing, which are completely contrary to these recommendations and further entrench discrimination against the Roma. Following the latest series of measures, the actions of the Italian authorities have further been condemned by among other the European Parliament and a group of UN experts, the latter of which has stated that “by explicitly associating the Roma to criminality, and by calling for the immediate dismantling of Roma camps in the country, these officials have created an overall environment of hostility, antagonism and stigmatization of the Roma community among the general public. This climate of anti-Roma sentiment has served to mobilize extremist groups, which have recently launched a series of attacks against Roma camps and individuals.”

Amnesty International will in this briefing outline its main areas of concern regarding actions taken over the past years targeting the Romani community, analyse their compliance with international human rights law and provide examples where such concerns have also been raised by international human rights bodies. It will further provide a set of recommendations to the Italian authorities and the European Union (EU) on how to ensure that Italy respects and protects the rights of Roma, including through compliance with its international obligations.

## **Measures targeting the Roma community**

### **Introduction**

During 2007 and 2008, members of Romani communities as well as Romani settlements have been at the receiving end of several measures taken by the

authorities in the name of 'security', as well as *vigilante* style attacks by members of the public. The measures taken by the authorities are often part of a very aggressive anti-Roma rhetoric by local and national politicians, as well as a stigmatizing and negative imagery of Roma in national and local media. The *vigilante* style attacks on Romani people and property are occurring in this atmosphere of fear-mongering and stigmatisation by politicians and media, which has created a climate in which verbal and physical attacks on Roma by members of wider society are increasingly accepted.

This chapter will address some such measures taken by the Italian authorities, including forced evictions, as well as anti-Roma speech itself and attacks on Romani people and property by private individuals.

### **Forced evictions**

A forced eviction has been defined by the UN Committee on Economic, Social and Cultural Rights, as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection." The Committee has stated that forced evictions are "prima facie incompatible with the requirements of the Covenant". It has clarified that before carrying out any evictions, States must ensure that all feasible alternatives are explored in consultation with the affected persons and that evictions can only be carried out when they follow due process and appropriate procedural protections, including legal remedies, are in place. Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they rent, own, occupy or lease the land or housing in question. Evictions must not "render individuals homeless or vulnerable to the violation of other human rights". The UN Commission on Human Rights has also recognised that forced evictions constitute gross violations of a range of human rights, in particular the right to adequate housing. The right to adequate housing, which has been interpreted to include the right to be protected against forced eviction, is guaranteed in several international human rights law treaties to which Italy is a party, including Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 31 of the Revised European Social Charter to which Italy is a party.

“Italy must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available. The Committee found that Italy has failed to establish that the relevant evictions it carried out satisfy these conditions.”

*The Council of Europe’s Committee of Ministers, 7 December 2005*

Amnesty International is concerned about reports of unlawful forced evictions of Romani communities in Italy over the past years. There has been an intensification in forced evictions following the so-called Security Pacts which were signed by the mayors of Rome and Milan on 18 May 2007. The Security Pacts were an agreement between the Ministry of Interior and the mayors and transferred some powers from national to regional levels, with the aim of addressing perceived security threats, including those reportedly posed by the presence of Romani communities in these cities. Similar Security Pacts were in force by mid-2008 in at least 18 different cities or regions around Italy<sup>1</sup>. These pacts included proposals to build four specially designated Romani camps outside of Rome to host up to 1,000 Romani people each<sup>2</sup>. These camps would be under surveillance by up to 100 law enforcement officials.<sup>3</sup> Following the launch of the Security Pacts, the then Prefect of Rome Achille Serra, stated that 10,000 Roma needed to leave the capital.<sup>4</sup>

Forced evictions have in some cases involved the total destruction of Roma settlements without notice, without consultation and without due process of law. Evictions have reportedly taken place in particularly bad weather (which resulted, in the case of the mass forced eviction from a Romani settlement near Tor di Quinto in Rome in late 2007, in large numbers of people being left in heavy rain at 4 am after their settlement had been destroyed), and without assurances of adequate alternative accommodation.

Amnesty International is also concerned about several forced evictions which took place prior to the latest intensification. During early 2007 there were numerous reports of forced evictions of Romani communities in Italy, including five prominent Romani settlements which were destroyed in Rome; these were the settlements in Villa Troili, Tor Pignattara, Scalo Tiburtino, Tor Vergata and Campo Boario. The latter, in Campo Boario, had existed for approximately 20 years and was the only home the younger generation of Roma living in that settlement had ever known. In early June 2008, the same settlement in a Campo Boario in Rome was reportedly destroyed by law enforcement officers.<sup>5</sup>

In September 2007, a group of 200 Roma living in Milan were forcibly evicted from their settlement, reportedly without any warning, without any respect for private



possessions and dwellings and without any alternative accommodation being offered for the group which included minors, pregnant women and elderly persons. In early 2008, the group made a complaint to a civil court in Milan asking for compensation for the way in which they were evicted<sup>6</sup>. A large group of Romani people was also forcibly evicted in October 2007 from the Stupinigi settlement in Turin without being offered any alternative accommodation.<sup>7</sup> Amnesty International is also concerned by reports that several other forced evictions of Romani individuals have been carried out in 2007 and 2008 and of arbitrary raids by the police on Roma settlements and camps.<sup>8</sup>

Amnesty International is particularly concerned that these forced evictions have happened against a backdrop of Italy's failure to implement the recommendations of the European Committee on Social Rights, endorsed by the Committee of Ministers of the Council of Europe, in respect of the communication by the European Roma Rights Centre<sup>9</sup>. The European Committee on Social Rights had found forced evictions and other sanctions constituted a violation of the European Social Charter, under the relevant article of which states parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available. The same Committee found that Italy had "failed to establish that the relevant evictions it carried out satisfy these conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions." Amnesty International urges the Italian government to immediately stop the practice of forcibly evicting Roma people and to take steps, as a matter of urgency, to comply with its international human rights obligations in this regard.

Italy's practice of forced evictions of Roma communities has also drawn concern over a number of years from other inter-governmental bodies. In March 2008, the UN Committee on the Elimination of Racial Discrimination (CERD) recommended that Italy "develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing, to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance."<sup>10</sup> The Committee also recommended that the Italian authorities acted firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities

Similar remarks were made by the UN Human Rights Committee in April 2006<sup>11</sup> when it recommended that Italy should reconsider its policy towards Roma, put an end to their residential segregation, and develop programmes to ensure their full participation in mainstream society at all levels. In its 2006 report on Italy<sup>12</sup>, the European Commission on Racism and Intolerance (ECRI) recommended that the

Italian authorities should not base their policies concerning Roma and Sinti<sup>13</sup> on the assumption that the members of these groups live a nomadic lifestyle and strongly recommended that the Italian authorities address the housing situation of the Roma and Sinti populations in close collaboration with the communities concerned.

Concern was also expressed by the Committee on Economic, Social and Cultural Rights which in December 2004<sup>14</sup> recommended Italy to take all necessary corrective measures to combat discrimination in the housing sector against the disadvantaged and marginalized groups, particularly the Roma. The Committee further recommended that Italy take effective measures to ensure that forced evictions of Roma and tenants who cannot pay their rents comply with the guidelines established by the Committee in its General Comment No. 7 and to provide more housing units to cater for the needs of the disadvantaged and marginalized groups.

### **Anti-Roma statements**

ECRI particularly regrets the persistent racist and xenophobic discourse by some Italian politicians, even at the highest levels, and in the media.

*European Commission Against Racism, 20 June 2008*

Amnesty International is concerned about the anti-Roma language which is reported to have been used by Italian officials and politicians. In the last few months, international and Italian media have published several articles reporting statements made by Italian authorities that may contribute to polarize and stigmatize the Roma community and may create a hostile climate in which verbal and physical abuse against Roma is legitimized.

Italy has an obligation under international law to prevent hate speech, including to ensure that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law<sup>15</sup>” Italy has come under heavy international criticism for the anti-Roma language used by politicians. The UN Committee for the Elimination of Racial Discrimination concluded that Italy “should increase its efforts to prevent racially motivated offences and hate speech, and ensure that relevant criminal law provisions are effectively implemented...[and]...recommends that...[Italy]...take resolute action to counter the tendency especially from politicians to target, stigmatize, stereotype and profile people on the basis of race, colour, descent and national or ethnic origin or to use racist propaganda for political purposes<sup>16</sup>”, while ECRI stated that it particularly

regretted “the persistent racist and xenophobic discourse by some Italian politicians, even at the highest levels, and in the media.<sup>17</sup>”

### **Attacks on Romani settlements and persons by non-state actors**

“As for vigilante attacks on immigrants, that is what happens when gypsies steal babies, or when Romanians commit sexual violence.”

*Roberto Maroni, Italian Minister of Interior, quoted in The Times, 29 May 2008.*

“Italy must combat racial discrimination, xenophobia and related violence, ensure prompt, impartial and thorough investigations into all such motivated violence and publicly condemn racial violence.”

*UN Committee Against Torture, 16 July 2007*

Over the past few years, many Romani settlements have been subject to *vigilante* style attacks, including arson attacks, by members of the public. In other cases, Romani persons have themselves been subject to physical and verbal attacks.

On 14 October 2007, Molotov cocktails were reportedly thrown at a Romani settlement in Turin by persons unknown. While all inhabitants of the settlement managed to escape unhurt, the trailers and other elements which made up the camp, burned to the ground. According to report, most of the inhabitants of the camp lost their personal documents in the fire<sup>18</sup>. In early May 2008, a Molotov cocktail was thrown into a Romani settlement in Novara, however the fact that it was raining ensured that the fire did not spread enough to cause substantial damage<sup>19</sup>

On 13 May 2008, a group of up to 100 persons reportedly armed with bats and Molotov cocktails attacked a Romani settlement in Ponticelli in Naples by setting parts of it on fire. The group also threw stones at the settlement. One Molotov cocktail was thrown at a trailer in which a number of children lived and the children only just managed to get out before the trailer was completely engulfed in flames. In total, around 800 Romani persons were forced to flee the settlement. During the day, several Romani persons were also subject to physical attacks in the surrounding area<sup>20</sup>. On 28 May 2008, there was another arson attack on the Ponticelli Romani settlement, which at that point was uninhabited.<sup>21</sup> On July 7 2008, the Ponticelli settlement was

again subject to arson attack, following news that some Romani families had returned to the settlement<sup>22</sup>. The municipality is now reportedly planning to build a shopping centre in the area where the Romani settlement used to be.

In May 2008, a Molotov cocktail was thrown into an unused shop which was reportedly illegally occupied by two Romani men<sup>23</sup>. In May and June 2008, a group of Romani students at a secondary school in Milan was reportedly subject to repeated verbal abuse from other students, including other students saying "disgusting gypsies, go home to your own country". The teachers at the school were so upset that they have written to the Italian government to ask them to stop taking anti-Roma action as it is creating serious social problems in educational environments<sup>24</sup>. In June 2008, a Romani woman who was six-months pregnant was kicked severely in the back several times outside a bar in Rimini. Reportedly, none of the people who saw the incident tried to help her<sup>25</sup>.

In a statement on 15 July 2008, a group of UN experts made an explicit link between the anti-Roma statements used by some Italian politicians with attacks on Romani settlements by non-state actors when it stated that it was "dismayed at the aggressive and discriminatory rhetoric used by political leaders, including Cabinet members, when referring to the Roma community. By explicitly associating the Roma to criminality, and by calling for the immediate dismantling of Roma camps in the country, these officials have created an overall environment of hostility, antagonism and stigmatization of the Roma community among the general public. This climate of anti-Roma sentiment has served to mobilize extremist groups, which have recently launched a series of attacks against Roma camps and individuals."<sup>26</sup>

In July 2007 the UN Committee against Torture<sup>27</sup>, with explicit reference to the situation of the Romani community, expressed "its concern at reports of acts of violence against and discrimination [...] and the reluctance on the part of the police and authorities to provide adequate protection to the victims and to effectively investigate those crimes." and recommended that Italy combat racial discrimination, xenophobia and related violence, ensure prompt, impartial and thorough investigations into all such motivated violence and publicly condemn racial violence.

### **Taking fingerprints from Roma**

On 25 June 2008, the Minister of Interior Roberto Maroni stated in a parliamentary debate that as part of an initiative to conduct a census of people living in Roma settlements, the fingerprints of Romani persons including children would be taken and registered. This initiative has reportedly already started to be implemented in some cities. Amnesty International considers this proposal to be discriminatory,

disproportionate and unjustified. This plan would violate international and regional human rights standards, including Article 8 of the European Convention on Human Rights (ECHR), regarding the right to respect for private life, and Article 14 regarding the right to freedom from discrimination.

On 10 July 2008, the European Parliament adopted a resolution on the census of the Roma on the basis of ethnicity in Italy, in which it urged the Italian authorities “to refrain from collecting fingerprints from Roma, including minors, and from using fingerprints already collected...[...].as this would clearly constitute an act of direct discrimination based on race and ethnic origin.”<sup>28</sup> The European Parliament further reaffirmed that “policies which increase exclusion will never be effective in combating crime and will not contribute to crime prevention or security<sup>29</sup>” and expressed concern at the affirmation “that the presence of Roma camps around large cities in itself constitutes a serious social emergency with repercussions for public order and security which justify declaring a state of emergency for one year.<sup>30</sup>”

The proposal to take the fingerprints of Romani persons including children has also come under criticism from a group of UN experts consisting of the Special Rapporteur on racism, Doudou Diene; the Independent Expert on minority issues, Gay J. McDougall; and the Special Rapporteur on the Human rights of Migrants, Jorge Bustamante. In a joint statement the experts expressed their “serious concern about recent actions, declarations and proposed measures targeting the Roma community and migrants in Italy,” and stated: “By exclusively targeting the Roma minority, this proposal can be unambiguously classified as discriminatory.<sup>31</sup>”

Additionally, the Secretary-General of the Council of Europe, Terry Davis, stated that “this proposal invites historical analogies which are so obvious that they do not even have to be spelled out. While I believe that Italian democracy and its institutions are mature enough to prevent any such ideas becoming laws, I am nevertheless concerned that a senior member of the government of one of Council of Europe’s member states is reported to have made such a proposal.<sup>32</sup>”

## **New legislation targeting irregular migrants, including Roma**

Throughout May, June and July 2008, several legislative changes aimed at addressing the perceived “security crisis” caused by crimes allegedly committed by irregular migrants and Romani persons in Italy were either discussed or adopted by the Italian parliament. These included governmental decree laws as well as more general bills and laws that need to pass through both chambers of parliament. The analysis in this briefing will concentrate on a Decree Law which came into force with immediate effect in May, rather than on proposed legislative initiatives pending at the time of writing.

On 21 May 2008, the Italian government issued a Decree Law<sup>33</sup> (Decreto Legge 92/08) aimed at addressing a perceived security crisis in Italy. The law came into force on 23 May 2008. Similarly, two urgent Decree Laws to tackle perceived security issues had been issued by the government in 2007 (Decreto Legge 181/07 and Decreto Legge 249/07<sup>34</sup>). Both these Decree Laws expired 60 days after they came into force.

The Decree Law 92/08 contains provisions which raise concerns about their compatibility with regional and international human rights laws and standards. Below Amnesty International highlights some of its concerns regarding provisions contained in these Decree Law, including their effects on Romani persons in Italy.

### **Expelling immigrants, including EU citizens**

The EU has passed a Directive (Directive 2004/38 /EC) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.<sup>35</sup> This Directive was implemented into Italian Law through a Legislative Decree (Decreto Legislativo) on 2 March 2008.<sup>36,37</sup>

However, this Legislative Decree amends two articles of the Italian Penal Code in a way which Amnesty International believes is not compliant with the EU Directive. The first amendment substitutes previous text<sup>38</sup> with a provision stating that immigrants, including citizens of EU member states, who have been sentenced to more than two years in prison will be expelled from Italy. The second amends previous text so that not complying with an expulsion order could result in four years’ imprisonment. This provision is applicable also to citizens of EU countries. While the first amendment applies to all migrants in Italy, it has been clear from the debates preceding its inclusion into the Law Decree that it was written with Romani persons of Romanian<sup>39</sup> origin in mind.

The Directive 2004/38 /EC on freedom of movement with the EU allows for restrictions on the residence and freedom of movement of EU citizens on grounds of public policy, public security or public health<sup>40</sup>. However, any measures taken must comply with the principle of proportionality<sup>41</sup> and be based exclusively on the personal conduct of the individual concerned, and take into account how long the individual has resided in the given territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State (in this case Italy), and the extent of his/her links with the country of origin<sup>42</sup>. Furthermore the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Previous criminal convictions in themselves shall according to the Directive not constitute grounds for taking such measures, and justification for the restriction of movement that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted<sup>43</sup>. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29 as outlined above<sup>44</sup>. Amnesty International is concerned that the provisions in Law Decree 92/08 do not comply with this Directive as the expulsion of a person who has been sentenced to two or more years in prison does not necessarily mean that they pose a threat to the fundamental interests of society as the Directive requires.

It is also important to highlight that an expulsion decision may not be taken against EU citizens or if the person in question has resided in the Member State for the previous ten years, except if the decision is based on imperative grounds of public security,<sup>45</sup>. Once a person has been notified of the expulsion order, the time allowed to leave the relevant territory shall be no less than a month from the date of notification<sup>46</sup>, meaning that immediate expulsions are not in line with Directive 2004/38/EC.

This Directive also contains important procedural safeguards. These include access to judicial and, where appropriate, administrative procedures to appeal against or seek review of any decision taken on the grounds of public policy, public security or public health<sup>47</sup>. Such procedures must allow for an examination of the legality of the decision as well as of the facts and circumstances on which the proposed measure is based and must ensure that such a measure is not disproportionate to its aim<sup>48</sup>. Amnesty International is concerned that changes adopted in the Decree Law 92/08 are in contradiction with the Legislative Decree implementing the EU Directive 2004/38/EC and urges the Italian authorities to ensure that such procedural safeguards are respected.

Amnesty International also urges to Italian authorities to consider the affects of expulsion orders on the right to family and private life and re-iterates the UN Human Rights Committee's recommendation from 2006 that the Italian authorities "should ensure that any restrictions on the right to privacy and family life are in accordance with the Covenant. It should provide more detailed information on restrictions to expulsion existing under Italian law, as well as on the way they are implemented by law enforcement officials as well as by the judiciary."<sup>49</sup>

### **Making being an irregular migrant an aggravating factor**

"The right to equality before courts and tribunals...guarantees...equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination."

*UN Human Rights Committee*

Law Decree 92/08 also amends the Italian Penal Code to make being an irregular migrant at the time of committing a crime in Italy an aggravating factor, increasing the punishment but up to a third if the person concerned is an irregular migrant<sup>50</sup>. As some members of the Romani community are for legal purposes considered to be irregular migrants, this may affect them directly. On 3 June 2008, the first verdict based on this new provision was handed out. A man of Senegalese origin without any residency status in Italy was sentenced to one year and two months in prison for selling illegal goods and assaulting a policeman in Naples<sup>51</sup>. Making being an irregular migrant an aggravating crime seems to contradict certain elements of the Italian constitution, including Article 3 which guarantees equality before the law<sup>52</sup>

Amnesty International is highly concerned by the fact that the immigration status of an individual is considered an aggravating factor. If a factor is to be considered aggravating in a legal sense, it needs to be directly related to the crime of which the person is accused. Considering migration status to be an aggravating factor is arbitrary and discriminatory in cases where being an irregular migrant bears no direct relation to the actual crime, as is the case in the example mentioned above where an irregular migrant was convicted of assaulting a policeman.

In fact, the International Covenant on Civil and Political Rights<sup>53</sup> states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on



any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Further, the UN Human Rights Committee has stated that “The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned [elsewhere], those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.<sup>54</sup>” Similarly, the UN Committee on the Elimination of Racial Discrimination has said that State parties are prohibited from discriminating in the enjoyment of civil, political, economic and cultural rights and that “States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights.<sup>55</sup>” The Committee expanded this by stating that “differential treatment based on citizenship or immigration status will constitute discrimination.<sup>56</sup>” The UN Committee on the Elimination of Racial Discrimination further stated that countries should “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<sup>57</sup>” and further added that states “should ensure that the courts do not apply harsher punishments solely because of an accused person’s membership of a specific racial or ethnic group.<sup>58</sup>” Provisions in the 92/08 Law Decree which discriminate against individuals on the basis of their irregular status clearly contravene international laws and standards, and must be repealed immediately.

### **Illegal to rent to irregular migrants**

States must guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.

*UN Committee on the Elimination of Racial Discrimination*

The same Decree Law modifies other legislation with the effect that renting accommodation to an irregular migrant is now punishable with six months to three years in prison<sup>59</sup>. As some members of the Roma community are for legal purposes considered to be irregular migrants, this may affect them directly. The apartment in question will be confiscated and sold. The money raised from selling the flat will be used to fight crimes related to irregular migration.

In early June 2008, a 72 year-old male pensioner in Rome was reportedly denounced for renting rooms to six Albanians<sup>60</sup>. The small villas that the migrants were renting were confiscated by a unit of the military police (*carabinieri*), and the man now risks up to three years in prison if convicted. The six Albanians were reportedly handed expulsion orders. In a separate case, the owners of a hostel near Bolzaneto risk having the room they rented to an irregular migrant for a night confiscated despite reporting the presence of the irregular migrant on their premises to the local authorities<sup>61</sup>. There are also unconfirmed reports of further cases of confiscated properties in Ravenna and Bergamo.

The UN Committee on Economic, Social and Cultural Rights has stated that the right to adequate housing applies to everyone, regardless of their status.<sup>62</sup> This right requires that adequate housing is accessible to those entitled to it and that all persons possess a degree of security of tenure which protects them from forced evictions, harassment and other threats.<sup>63</sup>

Amnesty International is concerned that this provision of Law Decree 92/08 may not be in line with Italy's international obligations. In 2008, the Committee on the Elimination of Racial Discrimination recommended that Italy "act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities."<sup>64</sup> The UN Committee on the Elimination of Racial Discrimination has noted that states must "Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health."<sup>65</sup> The Committee has further noted that states must "guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices."<sup>66</sup> The Committee on Economic, Social and Cultural Rights stated, with reference to the ICESCR, that "forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant."<sup>67</sup> Amnesty International considers the provisions of the Law Decree 92/08 regarding renting to irregular migrants to be in contravention of these standards.

The Committee has also clarified that any criteria for differential treatment, based on citizenship or immigration status, would constitute discrimination if they were not applied for a legitimate aim and proportional to the achievement of this aim. The Decree Law, by making it punishable to rent to irregular migrants, deprives such individuals of any legal security of tenure. Italy has also failed its obligation to protect the right to adequate housing of all persons by requiring landlords to deny access to adequate housing to irregular migrants. By making it an offence to rent to irregular migrants, the Decree Law leaves them vulnerable to forced evictions by landlords, who

are afraid of being penalised under the law, and to other forms of harassment and exploitation. It is also likely to deny irregular migrants access to housing which meets the standards of adequacy required by the ICESCR, or to leave them in a situation of homelessness. Amnesty International considers that the provisions of the Law Decree 92/08 to be in contravention of Italy's obligations under Article 11 of the ICESCR. Even if the aim of the law is to control irregular migration, the means sought are clearly disproportionate to the achievement of this aim. The law therefore also violates the prohibition on non-discrimination and does not satisfy the requirements for permissible limitations that Italy could place on rights set out in the ICESCR.

## **Recommendations**

### **Amnesty International calls on the institutions of the European Union to:**

- take all appropriate actions to ensure that Italy complies with the spirit and letter of Directive 2004/38/C on the right of citizens of the EU to move and reside freely within the territory of the member states.
- use all available opportunities to urge Italy to guarantee the right to adequate housing for the Roma and to refrain from forced evictions, in line with Italy's regional and international obligations and through implementing relevant recommendations by international human rights bodies in this regard.
- put pressure on Italy to comply with its regional and international human rights obligations regarding anti-Roma statements.
- condemn the climate of stigmatization and fear created by the Italian authorities and media.

### **Amnesty International calls on the national Italian authorities to:**

#### Regarding forced evictions

- immediately cease all forced evictions and legislate and enforce a clear prohibition on forced evictions.
- ensure that irregular migrants are not denied access to adequate housing and are conferred security of tenure, and that the implementation of legislation on access to housing and tenancy regulations do not have a discriminatory effect on non-citizens, or other minority groups.
- implement the recommendations of international and regional human rights bodies on stopping and preventing forced evictions and guaranteeing the right to adequate housing of the Roma.
- ensure that all evictions are in line with international human rights laws and standards.
- Develop and adopt guidelines for evictions which should be based on the Basic Principles and Guidelines on Development-Based Evictions and Displacement and must comply with international human rights law.
- Conduct a full, independent and impartial inquiry on the role of the police and other officials in carrying out forced evictions, and bring to justice all those suspected of having committed human rights violations.
- Respect the rights of all victims of forced evictions to an effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

- ensure that those Roma and Sinti who live a nomadic lifestyle are offered enough legal settlement alternatives to avoid a situation whereby they are *de facto* forced to live in illegal settlements.

#### Regarding anti-Roma speech

- ensure that racist behaviour by public officials, including law enforcement and administrative officials, is not tolerated. Derogatory or racist comments about Roma people by officials should be addressed with disciplinary and criminal measures.
- ensure that advocacy of hatred towards Roma that constitutes incitement to discrimination, hostility or violence is prohibited in law and that the prohibition is enforced in practice.
- ensure that officials and politicians refrain from making any comments or using language that might incite or encourage attacks on Roma communities.
- ensure the prosecution of any official or politician who advocates hatred against Roma which constitutes incitement to discrimination, hostility or violence, and that any other any racist or derogatory language or comments by officials or politicians is addressed with appropriate disciplinary or criminal measures.
- ensure that comments made by politicians do not create a stigmatising climate of fear and hate towards Roma communities.

#### Regarding attacks on Roma camps by non-state actors

- ensure that all attacks on Roma camps are thoroughly investigated and that the perpetrators are brought to justice.
- take resolute action against acts of violence, or any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of Roma community groups, especially by politicians, officials, and in society at large.
- Ensure that law enforcement agencies act promptly and decisively to prevent and respond to all forms of attack against Roma. Alleged offences against Roma should be effectively investigated and the perpetrators brought to justice.
- Ensure that specific directives and training are given to law enforcement officials on how to identify racially motivated crimes and to investigate them as such.
- ensure that attacks on Roma camps are not condoned by politicians, whether at local or national level. – change this to officials and politicians should condemn attacks on Roma camps; any who condone such attacks should be held accountable for advocacy of hatred that constitutes incitement to

discrimination, hostility or violence, prohibited under Article 20 (2) ICCPR, and should be prosecuted in accordance with Italy's criminal code.

Regarding freedom of movement

- ensure that the right to freedom of movement is respected in compliance with international human rights laws and standards, including provisions on non-discrimination, and that any restrictions on the freedom of movement are exceptional, proportional and necessary to protect national security, public order, public health, or the rights and freedoms of others, and are in purpose and effect non-discriminatory.
- comply with EU Directive 2004/38/C regarding freedom of movement within the EU.

Regarding taking finger-prints from Roma, including minors

- Comply with the European Parliament's recommendation to "refrain from collecting fingerprints from Roma, including minors, and from using fingerprints already collected...[...]...as this would clearly constitute an act of direct discrimination based on race and ethnic origin."

Regarding making being an irregular migrant an aggravating factor

- repeal all discriminatory aspects of Article 1 of Law Decree 92/08, including those which make a persons irregular status in the country an aggravating factor for sentencing.

Regarding making it illegal to rent to irregular migrants

- guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens by removing legal provisions which make it illegal to rent to irregular migrants.

**Amnesty International calls on the local Italian authorities to:**

- ensure that the *Prefetti* act in accordance with regional and international human rights law when implementing provisions of the Security Bill.
- ensure that the mayors act in accordance with regional and international human rights law when implementing provisions of the Security Bill, and that all acts taken by mayors in the context of security concerns are proportionate to the aim of that action.

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<sup>1</sup> Website of the Italian ministry of Interior:

[http://www.interno.it/mininterno/export/sites/default/it/temi/sicurezza/0999\\_patti\\_per\\_la\\_sicurezza.html](http://www.interno.it/mininterno/export/sites/default/it/temi/sicurezza/0999_patti_per_la_sicurezza.html)

<sup>2</sup> "Patto per Roma Sicura" 18/05/2007. Signed by the Prefect of Rome, the Mayor of Rome, the president of the Province of Rome and the President of the Lazio Region.

<sup>3</sup> Giu' I campi nomadi abusive – così parte il piano per Roma, *La Repubblica*, 18/05/2007.

<sup>4</sup> E nella capitale scatta l'ordine "Via diecimila rom abusive", *La Repubblica*, 19/05/2008.

<sup>5</sup> Pulizia in stile Alemanno, *Il Manifesto*, 07/06/2008

<sup>6</sup> Milano, i rom chiedono i danni a Palazzo Marino, *Il Manifesto*, 21/05/2008.

<sup>7</sup> Memorandum: Request for Expedited Engagement of follow-up procedure and/or urgent action/early warning procedure concerning Italy ICERD compliance, by COHRE/OsservAzione/ERRC/ASGI/ERGO/NRC/O Del Amnenca/PCRM/CRISS/RWAR.

<sup>8</sup> See for instance the Written comments of the European Roma Resource Centre (ERRC), the Centre on Housing Rights and Evictions (COHRE), OsservAzione and Sucar Drom concerning Italy for the Consideration by the United Nations Committee on the Elimination of All Forms of Racial Discrimination at its 72<sup>nd</sup> session. January 2008, available at: <http://www.errc.org/db/02/9B/m0000029B.pdf>.

<sup>9</sup> *ERRC v Italy*, Communication 27/2004, decision on the merits, 7 December 2005

<sup>10</sup> CERD/C/ITA/CO/15. Paragraph 14.

<sup>11</sup> Concluding Observations on Italy, UN Human Rights Committee, CCPR/C/ITA/CO/5, 24 April 2006.

<sup>12</sup> Third Report on Italy (CRI(2006)19), Adopted on 16 December 2005, made public on 16 May 2006, European Commission on Racism and Intolerance.

<sup>13</sup> Roma and Sinti are two different groups living in Italy. They are often referred to jointly as 'Roma'.

<sup>14</sup> Concluding Observations on Italy, UN Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.103, 14 December 2004.

<sup>15</sup> ICCPR, Article 20.

<sup>16</sup> CERD/C/ITA/CO/15. Paragraph 15.

<sup>17</sup> Third Report on Italy (CRI(2006)19), Adopted on 16 December 2005, made public on 16 May 2006, European Commission on Racism and Intolerance.

<sup>18</sup> Written comments of the European Roma Resource Centre (ERRC), the Centre on Housing Rights and Evictions (COHRE), OsservAzione and Sucar Drom concerning Italy for the Consideration by the United Nations Committee on the Elimination of All Forms of Racial Discrimination at its 72<sup>nd</sup> session. January 2008, available at: <http://www.errc.org/db/02/9B/m0000029B.pdf>.p. 20.

<sup>19</sup> Molotov e rom, *Il Manifesto*, 14/05/2008. See also: Novara, quattro molotov contro campo nomadi: nessun danno, *Il Messaggero*, 11/05/2008.

<sup>20</sup> Napoli, raid nella notte, incendiati i campi rom, *Il Manifesto*, 14/05/2008

<sup>21</sup> Napoli, nuovo incendio al campo Rom, *La Stampa*, 28/05/2008.

<sup>22</sup> Nuova fuga da Ponticelli, *Il Manifesto*, 08/07/2008. See also Napoli, nuovi roghi nei campi – "torna l'incubo di Ponticelli", *La Repubblica*, 07/07/2008

<sup>23</sup> Bomba Molotov contro negozio occupato da due romeni, *Il Corriere della Sera*, 15/05/2008.

<sup>24</sup> Insulti e minacce a studenti rom "Schifosi, tornatevene a casa", *La Repubblica*, 04/06/2004.

<sup>25</sup> Presa a calci giovane nomade incinta di 6 mesi, *La Repubblica*, 09/06/2008

<sup>26</sup> *United Nations Independent Experts concerned about stigmatization of the Roma community in Italy*, press release on 15 July 2008.

<sup>27</sup> Concluding Observations on Italy, UN Committee against Torture, CAT/C/ITA/CO/4, 16 July 2007.

<sup>28</sup> European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, P6\_TA-PROV(2008)0361.

<sup>29</sup> Paragraph 5, European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, P6\_TA-PROV(2008)0361.

<sup>30</sup> Paragraph 9, European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, P6\_TA-PROV(2008)0361.

<sup>31</sup> *United Nations Independent Experts concerned about stigmatization of the Roma community in Italy*, press release on 15 July 2008.

<sup>32</sup> "Council of Europe Secretary General Terry Davis on the proposal to fingerprint Roma in Italy", Press release- 484(2008).

<sup>33</sup> Decree Laws can, according to Articles 77 and 87 of the Italian Constitution, only be adopted in cases of extreme necessity and urgency. Decree Laws must be confirmed within 60 days by parliament to become law.

<sup>34</sup> Decree Law 181/07 expired 60 days after it came into force. Decree Law 249/07, came into force on 2 January 2008 and expired on 2 March 2008.

<sup>35</sup> Directive 2004/38/C of the European Parliament and of the Council, of 29 April 2004.

<sup>36</sup> Decreto Legislativo 32/08 called "Modifiche e integrazioni al decreto legislativo 6 febbraio 2007, n. 30, recante attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri". This Legislative Decree modified a previous Legislative Decree, which was called 30/07.

<sup>37</sup> A Legislative Decree is, in accordance with Article 76 of the Italian Constitution, a law which the parliament instructs the government to draft on a given topic as outlined by the parliament. The government is given a certain amount of time to draft it and to consult with the relevant parliamentary commissions, and must then present the Legislative Decree to the President who must then approve it for it to become law.

<sup>38</sup> Specifically, Article 1a of Decree Law 92/08 substitutes the text of Article 235 of the Italian Penal Code with a provision stating that immigrants, including citizens of EU member states, who have been sentenced to more than two years in prison will be expelled from Italy. Meanwhile, Article 1b of the Decree Law substitutes the text of Article 312 of the Italian Penal Code, meaning that not complying with an expulsion order could result in one to four years of prison.

<sup>39</sup> Romania is a member of the European Union.

<sup>40</sup> Article 27.1, Directive 2004/38/C

<sup>41</sup> Article 27.2, Directive 2004/38/C

<sup>42</sup> Article 28.1, Directive 2004/38/C

<sup>43</sup> Article 27.2, Directive 2004/38/C

<sup>44</sup> Article 33.1, Directive 2004/38/C

<sup>45</sup> Article 28.2, Directive 2004/38/C

<sup>46</sup> Article 30.3, Directive 2004/38/C.



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<sup>47</sup> Article 31.1, Directive 2004/38/C.

<sup>48</sup> Article 31.3, Directive 2004/38/C.

<sup>49</sup> Paragraph 18, Concluding Observations on Italy, UN Human Rights Committee, CCPR/C/ITA/CO/5, 24 April 2006.

<sup>50</sup> The punishment for a crime is increased by a third if the person convicted is an irregular migrant. The Article which is modified is Article 61 of the Italian Penal code.

<sup>51</sup> Napoli, aggravante per clandestinità prima condanna, *La Repubblica*, 04/06/08.

<sup>52</sup> Article 3, Italian constitution: *“Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali e sociali.”*

<sup>53</sup> International Covenant on Civil and Political Rights (ICCPR). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 *entry into force* 23 March 1976, in accordance with Article 49.

<sup>54</sup> *UN Human Rights Committee, General Comment No. 32. Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 21 August 2007, paragraph 8.*

<sup>55</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens. 01 October 2004, paragraph 3.

<sup>56</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30, paragraph 4.

<sup>57</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.31, paragraph 5.

<sup>58</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.31, paragraph 34.

<sup>59</sup> Specifically, Article 5 of the Decree Law modifies Article 12 the legislative decree 286/98 of 25 July 1998.

<sup>60</sup> Affitti ai clandestini, case sequestrate, *La Repubblica*, 11/06/2008.

<sup>61</sup> Affitti ai clandestini: sei sequestrati a Roma, *Stranieriinitalia.it*, 11/06/2008.

<sup>62</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, 13 December 1991, paragraph 6.

<sup>63</sup> *Ibid.*, paragraph 8 (a).

<sup>64</sup> Concluding Observations on Italy, UN Committee on the Elimination on All Forms of Racial Discrimination, CERD/C/ITA/CO/15, March 2008, paragraph 14.

<sup>65</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30, paragraph 29.

<sup>66</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30, paragraph 32.

<sup>67</sup> Committee on Economic, Social and Cultural Rights, General comment 7, paragraph 12.