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Submission to the UN Universal Periodic Review

Seventh session of the UPR Working Group of the
Human Rights Council

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Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concerns about the lack of inclusion of torture as a crime in the Italian Criminal Code; about counter-terrorism legislation; and about certain provision included in the Law 94/2009.
- Section C highlights Amnesty International's concerns in relation to rights of migrants, refugees and asylum seekers; forced evictions of Roma and Sinti communities; counter-terrorism and security; and the impact on human rights of Italian business operations in Nigeria.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Torture

Torture is punishable as a specific offence under the Italian wartime military penal code (*Codice penale militare di Guerra*, art. 185bis, introduced by Law No. 6 of 31 January 2002), but Italy has yet to include a specific crime of torture in its ordinary criminal legislation as required by Article 1 of the Convention against Torture to which it is a party. Recommendations to this effect have been made by the UN Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child in their concluding remarks on previous periodic reports by Italy.

In recent years, several bills aimed at introducing torture as a specific offence within the criminal penal code have been presented and discussed in the parliament. None of these proposals has succeeded.

Counter-terrorism legislation

Italy retains the so-called *Pisanu Law*, Law 155/05, which provides for expulsion orders for foreign terrorist suspects. An expulsion can be ordered by the Minister of Interior or by a prefect when there is a presumption of terrorist connections. The Law does not provide for judicial confirmation or authorization of the expulsion decision and does not guarantee effective protection against forcible return to countries where there might be a risk of torture or other ill-treatment.²

Law of 15 July 2009, n. 94

The Law of 15 July 2009, n. 94 (Law 94/2009), Regulation on public security (*Disposizioni in materia di sicurezza pubblica*), part of the so-called “security package”, came into force on 8 August 2009. Amnesty International is concerned that this law could heavily impinge on the rights of migrants and asylum-seekers and that it contains provisions that appear to be discriminatory and likely to affect disproportionately Roma and Sinti. Two provisions of the law are particularly questionable:

- *Criminalizing irregular migration*

The law (art. 1.16) establishes the offence of “irregular migration”, which criminalizes irregular entry and stay in Italy, imposing a penalty of between 5,000 to 10,000 Euros. Likewise, under the Law 94/2009, criminal proceedings against asylum-seekers for entering illegally will be suspended once a claim for international protection is lodged, and dismissed if international protection is granted.

Amnesty International considers that these provisions, and in particular the imposition of criminal penalties for irregular entry and stay in Italy, are excessively severe immigration control measures, which do not meet Italy’s obligations under international human rights law. In particular, they create new threats to the human rights of irregular migrants, including their right to health, to education and to birth registration, i.e. recognition as a person before the law.

² See also section below on Counter-Terrorism and Security

In addition, the introduction of the new crime of “irregular migration” can have further consequences for the individuals affected under other existing criminal provisions. Under the Criminal Code (Arts. 361 and 362), any public officer or person in charge of a public service (which include public servants, teachers, doctors in the public health service, local authority employees, including those in charge of issuing public identity cards and documents) are obliged to report all criminal acts to the police or judicial authorities. The new provisions may deter irregular migrants from accessing education, medical care, including emergency care, and protection by security forces against crime, for fear of being reported to the police. Parents, who are irregular migrants, may be reluctant to report the birth of their child and this would affect the newborn’s right to recognition before the law.

- *Establishing and empowering associations of citizens to patrol municipalities*

The law (arts. 3.40 to 3.44) allows local authorities (with the authorization of the provincial committee on public order and security, coordinated by the Prefect) to ask associations of unarmed civilians, not belonging to State or local security forces, to patrol the territory of a municipality, and to signal to the police “events which may damage urban security” or “situations of social malaise”. In Amnesty International’s view, rather than assisting in maintaining the rule of law and increasing public safety, the implementation of such a provision may result in discrimination and vigilantism. It is unclear if there will be any mechanisms to ensure that such groups are accountable for their actions to the public authorities, including for possible discriminatory and other abusive behaviour against marginalized and excluded minorities. In the last few years, several organizations – including Amnesty International - have documented attacks by self-organized groups against Roma and third country nationals in several parts of Italy. It is feared that, rather than help defuse such threats, the potential “legitimization” of such private citizens’ groups may lead to a higher and/or more covert level of harassment and abuses, which may even constitute crimes.

C. Promotion and protection of human rights on the ground

Rights of migrants, refugees and asylum seekers

During the first semester of 2009, Amnesty International has recorded events that appear to be highly detrimental to the rights of migrants, refugees, and asylum-seekers.

Obligations to respond to distress calls, to rescue and disembark migrants and asylum-seekers

The lives and safety of migrants and asylum-seekers have been recently placed at risk first by a dispute between the Italian and Maltese governments over their obligations to respond to distress calls under maritime conventions to which they are party, and subsequently by the Italian government’s unprecedented decision to transfer migrants and asylum-seekers rescued at sea to Tripoli, Libya.

On the morning of 6 May 2009, three vessels with an estimated 227 people on board sent out a distress call while passing about 50 miles south of the Italian island of Lampedusa. A dispute occurred between the Maltese and Italian government over who had responsibility for search and rescue operations in those waters and where the migrants should be disembarked. The rescue operations may have been delayed due to the dispute. Eventually an Italian cargo vessel, identified as the closest available craft, was asked by the Maltese authorities to rescue the boats, but it could not find them and continued its planned journey.

In the late afternoon of 6 May, the boats were rescued by two Italian coastguard vessels. The coastguard took the individuals to Tripoli, Libya, without stopping in an Italian port. According to media reports, Libya agreed that all those rescued, including non-Libyan nationals, could be disembarked in Tripoli.

On 16 April 2009, a Turkish cargo ship, “Pinar”, rescued an estimated 140 migrants and asylum-seekers whose boat was at risk of sinking in the waters south of Sicily. At least 10 of them were reportedly injured;

the body of a dead woman was also taken on board the rescue ship.

The rescue happened within the Maltese Search and Rescue Area and upon request of the Maltese authorities. The cargo ship was, however, impeded from reaching either a Maltese port or a closer Italian port to disembark the migrants as neither country would accept responsibility. The migrants were left stranded for four days, without sufficient water and food for the migrants, who were forced to “camp” on the deck of the ship. The Italian authorities dispatched a medical team on 18 April to verify the health conditions of the migrants. They were eventually allowed to disembark in the Italian port of Porto Empedocle on 20 April.

On 30 April 2009, the Italian authorities refused to let a Maltese coastguard vessel disembark 66 migrants on the Italian island of Lampedusa. The migrants had been rescued at sea by a Tunisian fishing boat, and reportedly transferred to the Maltese coastguard vessel within Malta’s Search and Rescue Area, only 23 miles from Lampedusa. The Italian authorities argued that Malta should disembark and assist the migrants and asylum-seekers on Maltese territory, since they were found within the Search and Rescue Area assigned by international conventions to Malta. The vessel was forced to return to Malta.

Amnesty International considers that disputes over jurisdiction or responsibility should neither prevent nor delay the rescue, provision of assistance or disembarkation of individuals in distress at sea. States must ensure that any international cooperation or assistance efforts, including border controls or immigration policies, do not result in human rights abuses.

Forcible sending of migrants and asylum-seekers rescued in international waters to Libya without proper assessment of their need for refuge and other forms of international protection

During the first semester of 2009, Amnesty International has received reports of different events that raise concerns about the situation of migrants and asylum-seekers rescued in international waters and sent to Libya without proper assessment of their need for refuge and other international protection.

In various incidents, between 7 and 11 May 2009, over 500 people, rescued on the high seas have been taken to Libya by Italy. All of these individuals, which include women and children, were sent to Libya without their asylum claims or need for international protection being properly assessed in a fair and effective asylum procedure with full procedural safeguards, thus breaching the prohibition of *non-refoulement*.

Even though the actions taken by Italy in returning individuals to Libya occurred outside Italian territory, the fact that an Italian coastguard took control of the third country nationals rescued or intercepted at sea means that a range of refugee and human rights obligations apply. It cannot be legitimately proposed that Italy was seeking to discharge these obligations by arranging, in any form of agreement, for Libya to undertake asylum determination or protect against *refoulement*.³

Forced evictions of Roma and Sinti communities

For the past 10 years, forced evictions of Roma and Sinti communities have been routinely carried out by the authorities; however, their frequency and impact seem to have increased since 2007. Communities affected include both those who live in unauthorized settlements and those who have a legal title to live in authorized settlements. Both Roma and Sinti with Italian citizenship and those with EU or other nationality have been adversely affected.

³ Libya is not a signatory to the 1951 Geneva Refugee Convention or its 1967 Protocol and does not have a functioning asylum procedure in place. In national legislation, there are no procedures which would allow asylum-seekers to present an application for recognition of their refugee status by the Libyan authorities. Furthermore, to Amnesty International’s knowledge, Libya has not signed a cooperation agreement for a formal UNHCR presence in the country. This means that anyone wishing to present an asylum claim to the UNHCR has limited opportunity to do so.

Many of them, forced to find alternative shelter at very short notice, often in unauthorized areas, have been subjected to repeated forced evictions. Very often forced evictions are carried out at short notice, without any prior consultation with communities on alternatives to eviction or provisions for alternative accommodation. Many evictions are carried out even without a formal notice or order. Those that are carried out with formal procedures often fail to be appropriately justified in domestic law. Lack of a formal order and the short advance notice also impede opportunities to try and stop the eviction via the courts.

Members of evicted families often lose their jobs and livelihoods. Children may be forced to move away from school in the middle of the school year and their education may be severely affected as a result.

The obligation of states to refrain from, and protect against, forced evictions from homes and land arises from several international legal instruments. These include, but are not limited to, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the International Covenant on Civil and Political Rights (art. 17), the Convention on the Rights of the Child (art. 27, para. 3), the International Convention on the Elimination of all Forms of Racial Discrimination (article 5 (e)), and the European Social Charter. Italy is a party to all the above treaties and has a legal obligation to implement them.

Forced evictions entail gross violations of a range of internationally recognized human rights, including the rights to adequate housing, food, water, health, education, work, security of the person, security of the home, and freedom of movement. Evictions may be carried out only in exceptional circumstances and in full accordance with relevant provisions of international human rights.

Counter-terrorism and security

Amnesty International has documented several cases of the Italian authorities forcibly returning individuals to countries where they face a real risk of being subjected to torture or other ill-treatment, in violation of the prohibition of *refoulement* enshrined in Article 3 of the UN Convention against Torture. In some cases, the Italian government has sent back terrorism suspects to third countries in violation of the European Court's orders to suspend such expulsions.

On 28 February 2008, the European Court of Human Rights ruled against Italy with respect to the 2006 decision by the Minister of Interior to expel Nassim Saadi to Tunisia, following his conviction in Italy for criminal conspiracy. Despite diplomatic assurances, he would have been at risk of fundamental human rights violations had he been returned to Tunisia.

On 4 June 2008, Sami Ben Khemais Essid, a Tunisian national, was expelled to Tunisia under an expedited procedure for removal of those considered a risk to national security (i.e. the *Pisanu* law), despite a request by the European Court of Human Rights to suspend his transfer to Tunisia pending its review of the case.

On 13 December 2008, Mourad Trabelsi, a Tunisian national, was expelled to Tunisia despite a request by the European Court of Human Rights to suspend his expulsion due to the risk of torture and other ill-treatment he would face in Tunisia.

On 2 August, 2009, Ali Ben Sassi Toumi, a Tunisian national, was forcibly returned from Italy to Tunisia. In Tunisia, he has been held incommunicado and his relatives have not been informed of his whereabouts. He was forcibly returned despite the European Court of Human Rights calling three times on the Italian authorities to stay the expulsion, on the grounds that he was at risk of torture and other ill-treatment in Tunisia.

Impact on human rights of Italian business operations in Nigeria

A subsidiary of the Italian oil company ENI operates in the Niger Delta in Nigeria. Serious human rights violations are associated with oil industry operations in the Niger Delta, including environmental damage and pollution, which has undermined the rights to food, clean water and livelihood. While some of this damage is the result of sabotage by third parties, much of it is preventable if appropriate social, environment and human rights impact assessments are undertaken and acted upon. However, the enforcement of national law and international standards in the Niger Delta is extremely weak. Companies are frequently self-regulated, which in effect means that they are un-regulated.

The oil industry in the Niger Delta comprises the government of Nigeria and several multinational companies. While some transnational oil companies - including ENI - have put in place some measures to prevent their operations causing human rights violations, these measures are insufficient and do not meet international human rights standards in several cases. Both the government of host countries (such as Nigeria) and of home countries of transnational companies (such as Italy) have a role to play in ensuring that corporate behaviour does not result in human rights violations, and that appropriate action is taken to hold companies to account - at the headquarters level as well as on the ground - for actions, decisions or failures that result in human rights violations.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

With regard to the protection against torture:

- To incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the UN Convention against Torture.

With regard to the Law of 15 July 2009, n. 94, the "Security package":

- To amend or withdrawn those provisions of the "security package" that may result in discrimination against minorities living in Italy;
- To ensure that the provisions in the "security package" are in full compliance with Italy's obligations under international human rights law, including;
 - To ensure that the right to adequate housing is protected, respected and fulfilled, including provision of or assistance in finding adequate housing;
 - To refrain from actions that could incite discrimination or hostility towards minority groups, including Roma, Sinti and migrants.

With regard to rights of migrants, refugees and asylum seekers:

- To ensure full respect of the fundamental rights of asylum-seekers, migrants and refugees;
- To cooperate closely with other countries in order to ensure that those rescued at sea are immediately brought to a place of safety, while fully respecting the principle of *non-refoulement*, and ensuring their access to a fair and satisfactory asylum procedure;
- To ensure that border controls policies, on land or at sea, are not implemented at the expense of the human rights of those on the move, but in accordance with international and regional human rights obligations;
- To end immediately the policy of transporting third country nationals to Libya after intercepting them in international waters.

With regard to forced evictions:

- To ensure that evictions are carried out only after all feasible alternatives have been explored, including through genuine consultation with those directly affected;
- To provide adequate and reasonable prior notification;
- To ensure adequate alternative accommodation;
- To guarantee that the right to legal redress, including to challenge eviction orders in court and to receive effective legal.

With regard to counter-terrorism and security

- To comply with the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- To bring all counter-terrorism legislation, including the so-called Pisanu Law, into compliance with Italy's international human rights obligation;
- To not forcibly return anyone to a country where they could be at risk of torture or other ill-treatment;
- To comply promptly and fully with the decisions of the European Court of Human Rights.

With regard to Italian business operations in Nigeria:

- To require by law that extractive companies headquartered or domiciled in Italy undertake human rights due diligence measures in respect of all their overseas operations, with particular attention to high-risk areas such as the Niger Delta;
- To establish parliamentary or similar oversight mechanisms to hear evidence on and review complaints against corporate actors in the extractive sector;
- To ensure that people whose human rights are harmed by the overseas operations of extractive companies headquartered or domiciled in Italy can access effective remedy in Italy including access to the courts, in cases where they cannot access effective remedy in their own state;
- To engage with and support the government of Nigeria in establishing an independent oversight body for the oil and gas industry.

Appendix: Amnesty International documents for further reference⁴

Italy/Malta: Obligation to safeguard lives and safety of migrants and asylum seekers, AI Index: EUR 30/007/2009, 7 May 2009.

Italy: Urgent Action – Further Information on Fear of imminent forced eviction, AI index: 30/006/2009, 6 May 2009.

Italy: Urgent Action – Fear of imminent forced eviction, AI Index: EUR 30/005/2009, 27 April 2009.

Italy: Urgent Action – Further information on forced eviction, AI Index: EUR 30/004/2009, 1 April 2009.

Italy: Urgent Action - Forced eviction, AI Index: EUR 30/002/2009, 13 March 2009.

Italy: Urgent Action – Forcible return/fear of torture or other ill-treatment, AI Index: EUR 30/001/2009, 5 February 2009.

Italy: Urgent Action – Further information on forcible return/fear of torture or other ill-treatment: Mourad Trabelsi, AI Index: EUR 30/012/2008, 19 December 2008.

Italy: Urgent Action – Forcible return/ fear of torture or other ill-treatment: Mourad Trabelsi, AI Index: EUR 30/011/2008, 10 December 2008.

Italy: Genoa court convicts 13 police and acquits 16 high-ranking officials over violence at 2001 G8, AI Index: EUR 30/010/2008, 17 November 2008.

Italy: Reduced to rubble: stop the violence against Roma [postcard], AI Index: EUR 30/007/2008, 17 September 2008.

Italy: Report – The witch-hunt against Roma people must end, AI Index: EUR 30/006/2008, 23 July 2008.

Europe: Report – Victims of rendition and secret detention still seeking justice, AI Index: EUR 01/012/2008, 24 June 2008.

Italy: Attacks against Roma communities in Italy, AI Index: EUR 30/002/2008, 23 May 2008.

Italy: Anti-Roma events in Italy are a wake up call for the EU, AI Index: EUR 30/001/2008, 20 May 2008.

⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/italy>