

**“WE WANTED
WORKERS BUT
WE GOT HUMANS
INSTEAD”**

LABOUR EXPLOITATION OF
AGRICULTURAL MIGRANT
WORKERS IN ITALY

**AMNESTY
INTERNATIONAL**



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GLOSSARY

“Labour exploitation”: in this paper, the notion of labour exploitation refers to labour conditions that are in violation of international law and standards. This is a broad notion, which encompasses phenomena of different gravity. This diversity is generally described by reference to a “labour exploitation spectrum”, a continuum of situations the gravity of which depends on working conditions, the worker’s personal circumstances and other factors. At one end of the spectrum, situations of no or little labour exploitation include freely chosen and regular work. Along the spectrum, irregular labour and exploitative labour would be followed by forced labour and slavery.¹

“Migrant”: a person who moves from one country to another to live and usually to work, either temporarily or permanently. Migrants may move to take up employment, or to be reunited with family members. Many move for a combination of reasons.

“Migrant worker”: according to the Migrant Workers’ Convention, “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Article 2.1).

“Regular migrants”: foreign nationals whose migration status complies with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under Italian law, are entitled to stay in the country. It is used as short for “migrants in a regular migration status”.

“Irregular migrants”: foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under Italian law, are not be entitled to stay in the country. It is used as short for “migrants in an irregular migration status” and as a synonym for “undocumented migrants”. The term “irregular” refers only to a person’s situation of entry or stay and does not express a quality of the individual.

“Undeclared workers”: workers whose employers fail to declare their employment relationship to the authorities to avoid paying taxes and social security; i.e. workers who are not provided with an official contract of employment and are employed irregularly.

“Trafficking of migrants”: according to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions against Transnational Organised Crime, “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

- 6 'We wanted workers but we got humans instead'
Labour exploitation of agricultural migrant workers in Italy

INTRODUCTION

This report focuses on foreign national migrant workers from sub-Saharan Africa, north Africa and Asia, employed in low-skilled, often seasonal or temporary jobs, mostly in the agricultural sector in some regions of Southern Italy. Its findings result from, among other things, two research visits to Italy, in February 2012 (Milan, Rome and Rosarno) and June-July 2012 (Rome, Latina area and Caserta area), during which Amnesty International delegates conducted meetings and interviews with migrant workers, NGOs and other civil society organisations, international organisations, trade unions and academic experts, as well as representatives of the *Direzione Nazionale Antimafia* (Office of the National Anti-Mafia Prosecutor) and of the *Questura* (Area Police Office) in Latina and Caserta.

In this report, Amnesty International expresses concern that:

- Migrant workers, especially those working in low-skilled jobs, such as those who find temporary or seasonal employment in the agricultural sector, are often victims of severe labour exploitation, in particular wages below the domestic minimum wage, arbitrary wage reductions, delays or non-payment of wages and long working hours (see Part One);
- Italian migration policy as currently formulated increases the risk faced by foreign national migrant workers, especially those in an irregular situation, of being subjected to labour exploitation (see Part Two); and
- Italy's legislative framework, and the way in which it has been implemented, create obstacles to access to justice for migrant workers who are victims of severe forms of labour exploitation, such as those mentioned above, and offer them inadequate protection (see Part Three).

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This document is a summary of *Exploited labour: migrant workers in Italy's agricultural sector* (Index: EUR 30/020/2012), published in December 2012. The quote in the title is by Max Frisch².

PART ONE: MIGRANT WORKERS' LABOUR EXPLOITATION

The Italian agricultural sector is heavily reliant on the foreign national migrant workforce. According to official data, in 2010 regular migrants carried out 23.6 per cent of the total working days in the agricultural sector in the country.³ Official statistics, however, do not capture the work of irregular migrants and the work of “undeclared workers” (regular migrants whose employers fail to declare their employment relationship to the authorities to avoid paying taxes and social security).

CASE STUDY: LABOUR EXPLOITATION OF INDIAN MIGRANTS IN THE LATINA AREA

According to official data, one in three agricultural workers in the area around Latina, a town in the Lazio region about 70 km from Rome, is a foreign national.⁴ However, the real figure, including undeclared and irregular migrant workers, is higher: according to a trade union representative, up to 80 per cent of agricultural workers in the Latina area are foreign nationals.⁵ About 7,000 Indian nationals live in the area, mostly of Sikh faith and originating from the Indian state of Punjab.⁶ Amnesty International’s research focused on this community.

LABOUR EXPLOITATION: UNFAIR WAGES, DELAYS OR NON-PAYMENT OF WAGES

According to the minimum standards agreed between trade unions and employers’ organisations, agricultural workers in the Latina area should work 6.5 hours a day, six days a week, for a gross hourly rate of 8.26 euros (between 5.60 and 6.60 euros after taxes).⁷ When Amnesty International visited the Latina area, in June 2012, many Indian agricultural workers were working 9-10 hours a day from Monday to Saturday, then half a day on Sunday morning, for 3 to 3.50 euros an hour. Some workers, all of them with valid residence permits, stated that they were working six days a week for 4 to 5 euros per hour.⁸ Only one of the 25 migrant workers interviewed by Amnesty International reported being paid 8 euros per hour.⁹ Migrants interviewed by Amnesty International reported that, where Italian nationals were working alongside Indian nationals, the Italian nationals were paid better and had better working conditions.¹⁰

Non-payment of wages, as well as delayed and/or partial payment are very common. **“Sunny”** (not his real name) – an Indian migrant worker who does not have documents and works without a contract - told Amnesty International:

“I work 9-10 hours a day from Monday to Saturday, then 5 hours on Sunday morning, for 3 euros an hour. The employer should pay me 600-700 euros a month and my plan was to send 500 euros a month to my father, mother and sister in India. However, the employer has not been paying me my full salary for the past seven months. He gives me just 100 euros a month for living expenses. My family in India had to ask for money from other families. I don’t have a contract with the employer, so I cannot leave because I would lose my money. I

can't go to the police because I don't have documents: they would take my fingerprints and I would have to leave. The only option for me is waiting to be paid."

Although irregular migrant workers tend to be paid less than regular ones, regular status does not necessarily guarantee better wages or a regular contact. "Sukhi", a regular migrant worker from India, told Amnesty International:

"I am paid about 3.10 euros per hour. I don't get any holidays – Sundays, national holidays or even Labour Day. I should earn about 800-850 per month, but the employer doesn't give me the entire amount. Sometimes he gives me 200 euros, another month it is 400 euros. He gives me the back-pay several months later – usually when I plan to go back to India."

Several regular migrants reported being paid less than the official salary on their pay slip or that, while they were working full time, their pay slip (on the basis of which their social security contributions are calculated) only showed a few days of work.¹¹ Some employers seem to arbitrarily deduct further amounts as "taxes". "Micky" (not his real name), a regular migrant worker from India, told Amnesty International:

"I work about 20 days a month, between 8-10 hours a day. My contract says that I should be paid 1090 Euros a month, but I only receive between 500-600 per month. The pay is 4 euros per hour; then the employer cuts about 150-200 per month for taxes and for providing the contract, etc..."

THE OBLIGATION TO RESPECT, PROTECT AND FULFIL THE LABOUR RIGHTS OF ALL WORKERS

Under Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States Parties are under a duty to respect, protect and fulfil "the right of everyone to the enjoyment of just and favourable conditions of work". These would ensure, for example: fair wages and equal remuneration for work of equal value; remuneration which provides all workers, as a minimum, with a decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours.

The UN Committee on Economic, Social and Cultural Rights has highlighted that the right to work safeguards should extend to everybody, including all migrant workers, in line with the principle of non-discrimination.¹² The UN Committee on the Elimination of Racial Discrimination recommended states to "Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated."¹³

CASE STUDY: LABOUR EXPLOITATION OF AFRICAN MIGRANTS IN THE CASERTA AREA

The Caserta area, in the Campania region, is about 200 km south of Rome. According to official statistics, it hosts about 23,000 foreign nationals (including EU nationals), 2.5 per cent of the population.¹⁴ In fact, the real ratio, including

irregular migrant workers, is probably much higher. The foreign population of Castel Volturno, a small coastal town on the Tyrrhenian sea, is officially 2,900 people out of a total of about 23,000 inhabitants; in reality, Castel Volturno is estimated to host about 7,000 foreign nationals, mostly of African origin.¹⁵ Sub-Saharan Africans, especially from Burkina Faso, Ghana and Nigeria, are the largest group, followed by migrants from North Africa: Algeria, Egypt, Morocco and Tunisia.¹⁶

Many regular and irregular migrants are employed in the agricultural sector, picking tomatoes and other fruit. Many of the migrants who live in the area travel regularly to other regions in Italy to look for agricultural work linked to the picking/harvesting seasons. Several of the migrants interviewed by Amnesty International in the Caserta area had been working in Calabria during the orange-picking season, in winter, and in Apulia during the tomato and watermelon-picking seasons, in summer.

LABOUR EXPLOITATION

Employers looking for workers to perform unskilled or low-skilled labour in the Caserta area go to the main roundabouts and squares, where migrant workers assemble in the early hours of the morning, waiting to be picked up for a day's work. In addition to agricultural work, such labour can include cleaning, gardening, and decorating. There are several of these roundabouts and squares; some of the migrants call them "kalifoo grounds", a term reportedly used by migrants in Libya. "**Hassan**" (not his real name), a migrant worker from Cote d'Ivoire, told Amnesty International:

At the moment I don't have a job. Every morning I look for work at the roundabouts. I go out at 4.30am. By 5am I am at the bus stop; I go to the roundabout in Licola or the one in Giugliano. I wait for someone to come and take me to work. But we are many. The one who arrives at the car first gets to work."

The minimum pay for an agricultural worker in the Caserta area, as set between trade unions and employers' organisations, should start at 36.91 euros (before taxes) for 6.5 hours of work (5.70 euros per hour).¹⁷ However, at the roundabouts the bargaining power of migrant workers, whatever their migration status, is virtually non-existent. "Any job that anyone gives me I take", explained "**Body**" (not his real name), a migrant worker from Ghana. The standard pay for a day of work (8 to 10 hours) is 20-30 euros, that is no more than 3.75 euros an hour.¹⁸ Occasionally, depending on the goodwill of the employer, a day of work can be paid 35 or even 45 euros, i.e. up to 5.60 euros an hour.¹⁹ That is, however, an exception. Some migrants reportedly accept to work for as little as 15-20 euros a day.²⁰ "**Afram**" (not his real name), a migrant worker from Cote d'Ivoire, told Amnesty International:

"Today I worked from 6am to 6pm, with a 30-minutes break, hoeing a field. I was paid 20 euros. If you don't like the pay there are other people [who would work for that pay]".

The work on offer at the roundabouts and on squares is insecure, completely undeclared and does not afford any guarantees in terms of health and safety or social security. Many migrant workers accept it because as a result of their irregular status they do not have a real alternative. "**Ismael**" (not his real name), a migrant

worker from Burkina Faso, told Amnesty International:

“When you don’t have papers you can only get work on the black market, which is badly paid. We get 25 to 30 euros per day for eight or nine hours of work [from 2.75 to 3.75 euros per hour]. But if we get hurt we don’t get anything.”

Non-payment of wages is common. Because of the nature of the work on offer at the roundabouts, often the identity of the employer of the day is unknown, making it extremely difficult to recover the wages due. **“Ali”** (not his real name), a Tunisian migrant worker, told Amnesty International:

“Many migrant workers do not get paid. Once I found a job for a week. The employer owed me 250 euros but he disappeared. I don’t know his name and I cannot track him down.”

“Baba” (not his real name), a migrant worker from Ghana, told Amnesty International:

“Sometimes you agree 25-30 euros, but at the end of the day they give you 15-20 euros. It happened to me three or four times. It happened to me twice that the employer told me to come tomorrow, that I would be paid at the end of the job. But the day after they weren’t at the workplace anymore and they did not come back. So I did not get paid at all.”

PART TWO: ITALY'S MIGRATION POLICY INCREASES THE RISK OF LABOUR EXPLOITATION

THE "FLOWS DECREE" SYSTEM: INEFFECTIVE AND OPEN TO ABUSE

Italy's current migration policies are premised on two key objectives. The first of these is the regulation of entry flows. The number of migrant workers admitted to the country every year is capped and determined in an annual decree (the "flows decree", *decreto flussi*), which sets quotas for different types of workers.²¹ The second objective is to ensure that the issuing of a residence permit is dependent on the existence of a written contract of employment, as guaranteed by the employer. Accordingly, non-EU migrant workers who want to work in Italy can enter the country only if they manage to secure, prior to arrival, a "residence contract" (*contratto di soggiorno*) with an employer based in Italy.

The employer must apply to the immigration authorities for authorisation to hire a non-EU migrant worker, submitting a proposal for a "residence contract" in which he/she undertakes to guarantee suitable accommodation and pay the costs of the return journey.²² Once it is verified that no Italian or other EU-national worker is interested in the job, the Italian authorities issue the authorisation (*nulla osta al lavoro*), subject to the relevant quota requirements as laid down by the "flows decree".²³ On the basis of this authorisation, the relevant Italian consular authorities in the migrant worker's country of origin issue him/her with an entry visa. Once in Italy, the migrant worker must submit the residence contract to the authorities, signed by both the worker and the employer, and apply for a residence permit.²⁴ Residence permits for contracted workers are valid for up to two years.

The procedure for obtaining seasonal employment is similar to the procedure for obtaining non-seasonal contractual employment. It is for the employer to apply for a work authorisation, which the authorities can only provide within the limit of quotas set by the government. Once the employer has received the authorisation, the worker can apply for an entry visa, which, once obtained, needs to be converted into a residence permit within eight days of arrival in Italy.²⁵

This "flows decree" system suffers from several significant practical shortcomings:

- The entry quotas established by the Italian government remain consistently below the real market demand for migrant labour.²⁶
- The process that would allow an employer to recruit a foreign worker is long and bureaucratic. It can take more than nine months to receive an authorisation (*nulla osta*) for entry in the country after the application has been submitted.²⁷ Consequently, the assumption that employers in Italy would recruit migrant workers while they are still in their country of origin – when they can hire migrants who are already in Italy, even though they are in an irregular situation - has been criticised as unrealistic.²⁸ This is especially true for low-skilled jobs, such as those typically done by seasonal workers employed in agriculture or tourism.

- Migrant workers cannot apply for a residency visa without the cooperation of their employer. However, even when the employer is willing to conclude a "residence contract" with an irregular migrant, residence permits for contracted or seasonal work cannot legally be issued to migrant workers who are already in Italy irregularly. Irregular migrant workers, therefore, have no choice but to work in the informal economy, as undeclared workers.

As a result, the Italian "flows decree" system is both ineffective and open to abuses, as illustrated in the next sections.

THE REALITY OF THE SEASONAL PERMITS SYSTEM IN THE LATINA AREA

The research conducted by Amnesty International in the Latina area shows that a visas sale system seems to have been established, taking advantage of flaws in the seasonal permits system. A *nulla osta* (authorisation necessary to obtain an entry visa) can be obtained through friends already in Italy, or bought through more complex smuggling organisations with "agencies" and "intermediaries" both in Italy and in countries of origin, such as India. Residence contracts can also be bought, as well as promises of employment. "**Sunny**", a Punjabi migrant worker, told Amnesty International:

"In India I paid 300,000 Rupees (about 4,300 euros) for a *nulla osta* to enter Italy. To have a contract once you arrive in Italy you need to pay 1,000 euros more. I did not know the regulations in Italy, so I paid only for entry."

Those posing as future employers receive money to apply for the authorisation, but in most cases have no intention to employ the newly-arrived regular migrants. As a consequence, often either residence contracts are not signed and, eight days after arrival in Italy, the worker's status in the country becomes irregular; or residence contracts are signed so that authorities issue a seasonal residence permit, but no employment is provided.

In some cases migrant workers are deceived with respect to the nature of the papers, the availability of a job and/or their pay. For example, two Indian migrant workers among those with whom Amnesty International delegates spoke said that they had paid 1 million rupees (about 14,300 euros) each to an agent in India for a long-term residence permit and a job; they received a visa and a seasonal residence permit, but no employment.²⁹ Another Indian migrant, "**Sonu**" (not his real name) paid 450,000 rupees (about 6,500 euros) for a residence permit and a well-paid job; he received an authorisation (*nulla osta*) but no further documentation to complete the process to obtain regular papers; and the work which the agent arranged pays only 3.50 euros per hour.

Amnesty International's findings are consistent with those of a comprehensive study published in December 2010 by the International Organization for Migration (IOM), which shows the shortcomings of the seasonal permits system in several areas of Southern Italy.³⁰

ABSENCE OF EFFECTIVE REGULAR MIGRATION CHANNELS

Civil society organisations working with migrant workers have pointed out that, because of the shortcomings of Italy's "flows decree" system, the migrant workers who arrive in Italy after having been hired by an employer while they are abroad are a minority.³¹ Entering the country irregularly and/or experiencing a period of irregular stay is a common stage of the migration phenomenon in Italy. The majority of non-EU national migrant workers arrive in Italy on a visa other than the one for contracted employment, or irregularly.³²

Because regular migration channels are insufficient and permanent regularisation mechanisms are unavailable, the "flows decree" system has *de facto* become a periodic, unofficial regularisation mechanism. Employers apply to obtain a *nulla osta* and a visa for migrant employees who are already in Italy, including in many cases in exchange for money. When the employer is unwilling to "regularise" the migrant worker's position, the necessary documentation is often obtained through "agencies" and other individuals, also in exchange for money. If and when the employer receives the *nulla osta*, the migrants go back to their country of origin to collect their entry visa and re-enter Italy, this time regularly.

"**Shabi**", a Punjabi migrant worker, told Amnesty International:

"The first time that my employer applied for my *nulla osta* [authorisation] for seasonal work I had been working for him for four months. I had to pay 200 euros to an accountant. The *nulla osta* arrived in July 2008. A few days later I went back to India to collect my visa and came back the following November. The residence permit expired after nine months. In May 2009 the employer applied a second time; I had to pay 150 euros. The *nulla osta* did not arrive until October 2010. After a week I went back to India again to pick up my visa."

In this process, irregular migrant workers are completely dependent on their employer's willingness to apply for the documents necessary to regularise their status, as the procedure to obtain a *nulla osta* can only be initiated by the employer. This exposes them to an increased risk of labour exploitation.

A WORK MIGRATION SYSTEM THAT ENCOURAGES LABOUR EXPLOITATION

Amnesty International considers that the measures adopted in Italy with the stated view of controlling and regulating migration flows, in particularly the way in which the "decree flows" system operates in practice, increase the already heightened risk of irregular migrant workers being subjected to labour exploitation. The need to have a formal labour contract in order to obtain or renew a residence permit makes migrant workers dependent on the willingness and cooperation of their employer. The employer's effective power to determine the worker's migration status can easily become a tool to intimidate or threaten workers, undermining their ability to negotiate better wages and working conditions.

Often, the promise of regular documents is used by employers to induce migrant workers to accept exploitative labour conditions. "**Hari**" (not his real name), an Indian migrant worker, told Amnesty International:

“For the first four years after coming to Italy I worked in a factory that packed onions and potatoes for export. I was paid 800 euros a month for 12-14 hours of work a day. It was really tough work. The employer used to tell me that if I worked hard and well, they would get papers for me – they never actually did so.”

The non-payment of wages or arbitrary wage deductions are also common instances, with the employer using their “cooperation” in the process to obtain a residence permit for the workers as a leverage. “Mithu” (not his real name), an Indian migrant worker, told Amnesty International:

“In 2009, when my employer received a *nulla osta* for me, I had been working in his farm for more than two years and was paid 3.70 euros per hour. A couple of months later I went to India to pick up my visa. When I arrived back in Italy my employer said that he did not want to employ me further and refused to give me the contract that I needed to obtain my seasonal residence permit. I had to involve the CGIL [a trade union] and the local authorities to persuade him to give me the residence contract. At that point, the employer owed me more than 6,500 euros in unpaid wages. When I asked for them, the employer told me that he had deducted 3,000 euros for the *nulla osta*.”

The testimonies collected by Amnesty International are not isolated cases. In a 2009 survey of 291 victims of serious labour exploitation, 47% of the workers interviewed indicated that their exploitative working relationship was characterised by false promises on the part of the employer to conclude residence contracts and/or other documents necessary to regularise the worker's status.³³ In other words, the workers could not regularise their migration status because of the lack of cooperation on the part of the employer, which kept the worker in a situation of risk, resulting in labour exploitation.

PART THREE: THE FAILURE TO ENSURE JUSTICE FOR VICTIMS OF LABOUR EXPLOITATION

Italian legislation recognises the right to access to justice to all foreign nationals in broad terms, including access to the “judicial determination of rights and interests”, non-discrimination before the public administration and access to public services.³⁴ However, while the right to access justice and to a remedy for violations of labour rights is formally guaranteed to all migrants, the realization of this right in practice is seriously limited.

With respect to rights arising out of previous employment, the ILO Committee of Experts has recommended that the Italian government amend current legislation to ensure that migrant workers who contest an expulsion order in order to claim rights arising out of past employment are allowed to reside in the country for the duration of the case.³⁵ In March 2012, expressing concern at “the lack of appropriate legal protection for migrants, in particular against exploitation or abusive working conditions”, the UN Committee on the Elimination of Racial Discrimination recommended that Italy

“amend its legislation to allow undocumented migrants to claim rights arising out of previous employment and to file complaints irrespective of immigration status.”³⁶

THE CRIMINAL OFFENCE OF “ILLEGAL ENTRY AND STAY”

In May 2008 the then newly established government announced several emergency legislative measures, known as the Security Package (*pacchetto sicurezza*), which, the authorities stated, were intended to fight “widespread illegality linked to illegal migration and organized crime”.³⁷ 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.³⁸

Amnesty International believes that the criminalisation of “irregular entry and stay” in Italy is inconsistent with the country’s obligations under international law. While immigration control may be a legitimate interest of the state, the criminalization of irregular migration is an unnecessary and disproportionate measure for the state to take.³⁹

Additionally, the criminalization of irregular migration creates obstacles to irregular migrants’ access to justice. Given that “illegal entry and stay” is a crime, irregular migration status automatically triggers the requirement of any public officer to report all suspected criminal acts to the police or judicial authorities.⁴⁰ 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 for the offence of "irregular entry or stay", and even detained and ultimately expelled. As a result of this, many irregular migrants are afraid to contact the authorities and avoid seeking legal remedies, even where they are entitled to them.⁴¹ "**Jean-Baptiste**" (not his real name), a migrant worker from Burkina Faso, told Amnesty International:

"When the employer does not pay, what can you do to get your money? Without documents, how can you go to the police? You can't go to the police or to the *carabinieri* without documents. Without documents, you get expelled. But you haven't done anything wrong..."

The criminalisation of irregular migration and the reporting requirements it created have far-reaching negative effects on measures intended to protect the rights of migrant workers, including: the labour inspection system; and the Article 18 permits system for victims of trafficking for labour exploitation.

CRIMINALISATION OF IRREGULAR MIGRATION AND THE LABOUR INSPECTION SYSTEM

Italian labour inspectors are responsible for combating undeclared employment, including employment of irregular migrant workers. The introduction of the crime of "illegal entry and stay" exacerbated the situation, as labour inspectors, like other public officials, are now under the obligation to report irregular migrants to the immigration authorities. The ILO Committee of Experts recommended that the Italian government take measures to distinguish the powers and working methods of labour inspectors from those of the officials of other bodies responsible for combating illegal employment and controlling migration.⁴² However, to date, the Italian authorities have not taken any action to implement the above-mentioned recommendation.

IS THE LABOUR INSPECTIONS SYSTEM WORKING?

During 2011 Italian authorities carried out 93 labour inspections in the agriculture sector of the Latina area: 57 (61 per cent) of the companies inspected were found to be in violation of labour and social security legislation.⁴³

The migrant workers interviewed by Amnesty International in the Latina area reported that the labour inspections were few and ineffective. Several reported that they had never seen a labour inspector in their years of work in Italy.⁴⁴ "**Bunty**" (not his real name), an Indian migrant worker, told Amnesty international: "I don't even know what these inspectors look like – they are the invisible men."

Other migrant workers interviewed by Amnesty International in the Latina area mentioned inspections where irregular migrants had run away into the fields, fearing that they would be reported to the authorities as irregular migrants.⁴⁵ One worker told Amnesty International that a few years ago he had been working when a "control" took place. However, the inspectors were only interested in whether tax was being paid; they were not interested in the rights of the workers to decent working conditions.⁴⁶

The dysfunctional inspection system places Italy in potential breach of its obligations under the relevant ILO Labour Inspections Conventions 81 and 129.

CRIMINALISATION OF IRREGULAR MIGRATION AND THE ARTICLE 18 SYSTEM

Under Article 18 of the 1998 Consolidated Act on Immigration, foreign nationals who are victims of trafficking are entitled to a "residence permit for social

protection" (*permesso di soggiorno per motivi di protezione sociale*), which allows them to participate in an assistance and social integration programme. Until July 2012, the Article 18 residence permit system was the main protection mechanism available for migrant workers victims of labour exploitation.

Concern has been raised about the fact that a restrictive application may have made the Article 18 system largely ineffective. Between January and December 2011, of the 700 cases of labour exploitation registered with the government's Equal Opportunities Department, only 117 residence permits were granted under Article 18 (16.7 per cent).⁴⁷ The criminalisation of irregular migration compounded the system's ineffectiveness, by shifting the authorities' attention to border control and migration enforcement.⁴⁸

THE CRIME OF "CAPORALATO"

In September 2011, a law was adopted introducing in the Italian criminal code the crime of "unlawful gangmastering and labour exploitation" (*intermediazione illecita e sfruttamento del lavoro*), a phenomenon known in Italian as *caporalato*.⁴⁹

This provision was a positive development, insofar as it introduced a new criminal law tool to combat labour exploitation, intended to be more flexible than those provided by the criminalisation of trafficking and slavery. However, doubts were expressed with respect to the actual prospects of this provision being successfully implemented.⁵⁰ In particular, the provision targets abusive intermediaries, but not abusive employers. Civil society organisations pointed out that *caporalato* is only one form of labour exploitation and highlighted the paradox of sanctioning "caporali" – i.e. the gangmasters – more harshly than exploitative employers recruiting their workforce without middlemen.⁵¹

Additionally, the criminalization of "illegal entry and stay" continues to make it extremely difficult for irregular migrants, who are particularly at risk of being victims of unlawful gangmastering for labour exploitation, to report it.

Because the criminalization of "illegal entry and stay" creates obstacles to irregular migrants' access to justice, Amnesty International believes that it is inconsistent with Italy's obligation to guarantee a practical and effective remedy for all victims of human rights violations.

THE "ROSARNO LAW": NOT IN LINE WITH RELEVANT INTERNATIONAL OBLIGATIONS

In July 2012 Italy adopted Legislative Decree No. 109 (the "Rosarno Law"), which introduces some aggravating factors to the crime of employing irregular migrant workers, including the case of "particularly exploitative working conditions", as well as the additional financial sanction of payment of the cost of return of the worker to their country of origin.⁵²

The Law provides also for the granting of a residence permit for humanitarian reasons to the migrant workers who suffered "particularly exploitative working conditions"; however, it requires that they report their employer to the authorities and cooperate in the criminal proceedings against them.⁵³ Amnesty International is

concerned that this requirement fundamentally undermines the Law's effectiveness in ensuring access to effective remedies to victims of labour exploitation, as many such victims may not be eligible for residence permits and would as such be unable to stay in the country to benefit from available remedies. The Italian government itself admitted that the new residence permits would be granted in a limited number of cases, as the criteria for the granting of such permits are even more restrictive than the criteria for the granting of the residence permits under Article 18 (and include the additional requirement of cooperation in criminal proceedings).⁵⁴

These restrictions mean that the Rosarno Law does not fulfil Italy's obligation to protect "the right of everyone to the enjoyment of just and favourable conditions of work" as guaranteed under article 7 of ICESCR, among others.⁵⁵

Furthermore, The "Rosarno Law" omitted to take certain non-criminal measures against employers of irregular migrants recommended in EU legislation, such as: exclusion from public subsidies, including EU funding; exclusion from participation in public contracts; closure of the work establishments or withdrawal of necessary licenses; imposition of an obligation to make back payments of outstanding remuneration to the irregular migrant workers.⁵⁶

As a result of these shortcomings, the real protective effect of the "Rosarno Law" on the rights of irregular migrant workers is severely called into question.

ADDITIONAL OBSTACLES TO ACCESS TO JUSTICE

The lack of a written contract often makes it difficult for the employee to identify the employer and prove what contractual terms were originally agreed, including with respect to fundamental terms such as hours and remuneration. This situation creates an additional obstacle to redress for both regular and irregular migrant workers. "Baba" told Amnesty International: "Who are you going to complain to? You can't go to the police because you don't have a work contract; you know the workplace but you don't know where the employer lives." "Ali" told Amnesty International: "Even if we call the carabinieri when we don't get paid, they are not interested. It is our word against the employer's."

Further obstacles await those migrant workers who decide to report the abuses they have suffered. Amnesty International received worrying reports of migrant workers being refused the opportunity to report human rights abuses because of their irregular status. In July 2011 "Shabi" had an altercation with his employer, who had refused to complete the process for his residence permit and pay him, at the end of which the employer hit him with a wooden stick. When he tried to report the incident to the police station, "Shabi" was told that a report could not be filed because he did not have a residence permit. His report was filed only when he went to a *carabinieri* station with his lawyer and a union representative.

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International's research found evidence of widespread severe labour exploitation of migrant workers in the agricultural sector in the areas of Latina and Caserta, in particular wages considerably below the minimum agreed by unions and employers, arbitrary reductions of wages, delays or non-payment of wages and very long hours of work, in violation of Italy's obligations under several international conventions protecting labour rights. These findings reinforce those of other studies that reveal similar patterns of labour exploitation in other sectors and various other parts of Italy.

Amnesty International's findings indicate that measures adopted by the Italian government with the stated view of controlling and regulating migration flows directly contribute to the exploitation of migrant workers. The "flows decree" mechanism, by not properly taking into account the reality of the employment situation of migrant workers and the actual demand for migrant labour, is creating an environment that facilitates the exploitation of migrant workers. The provision of the Security Package criminalizing "illegal entry and stay" creates obstacles to irregular migrants' access to justice. Irregular migrant workers who report abusive working conditions risk not only losing their job, but also being charged with the crime of "irregular entry and stay". Inevitably, irregular migrant workers – who are especially vulnerable to labour exploitation precisely because of their migration status – are deterred from exposing abusive labour conditions. Because the criminalization of "illegal entry and stay" creates obstacles to irregular migrants' access to justice, Amnesty International believes that it is inconsistent with Italy's obligation to guarantee a practical and effective remedy for all victims of human rights violations.

Additionally, this report expresses serious concerns about the lack of resources, ineffectiveness and problematic legal framework of the labour inspection system. The dysfunctional inspection system places Italy in potential breach of its obligations under the relevant ILO Labour Inspections Conventions 81 and 129.

Furthermore, Italy's current legislation focuses on the repression of trafficking and extreme forms of labour exploitation, such as forced labour and slavery, but it is inadequate to ensure protection and access to justice to victims of less extreme forms of labour exploitation. Recent measures intended to protect workers from other forms of labour exploitation, such as the criminalisation of "caporalato" (unlawful gangmastering) and the "Rosarno Law", risk being largely ineffective.

In conclusion, Amnesty International believes that the system created by the "flows decree", the Security Package and the inadequate protection for victims of labour exploitation, facilitates the exploitation of migrant workers and create obstacles to their access to justice. The organization believes that this system violates the country's obligation to respect, protect and fulfil the rights of migrant workers to just and favourable conditions of work, which is provided for, among others, under

Art 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Italy ratified in 1978.

RECOMMENDATIONS

The Italian authorities should:

- **Respect, protect and fulfil the right to just and favourable conditions of work of all migrant workers, regardless of their migration status.**

TO ENSURE THAT ITALY'S MIGRATION POLICY DOES NOT FACILITATE THE EXPLOITATION OF MIGRANT WORKERS:

- **Revise the country's migration policy in order to provide better protection for all migrant workers and to better take account of the reality of the labour market.** In so doing, they should encourage dialogue and consider evidence from all relevant actors, including those civil society groups working directly with and on behalf of migrant workers.

- **In particular, in light of the discrepancy between the entry quotas established by the Italian government and the real market demand for migrant labour, expand the regular migration channels.**

- **Implement the recommendation made by the International Organisation for Migration to grant a temporary residence permit to those migrant workers who have arrived in Italy with a visa for seasonal employment but are not in a position to convert it into a residence permit.⁵⁷**

TO ENSURE ACCESS TO JUSTICE FOR MIGRANT WORKERS WHO SUFFER LABOUR EXPLOITATION:

- **Repeal the provision of the Security Package criminalizing "illegal entry and stay".**

- **Ensure that the primary purpose of labour inspections is to safeguard the rights of all workers, particularly the most vulnerable, in line with Italy's international obligations. In particular, Italian authorities should relieve labour inspectors from any immigration enforcement functions, allowing them to focus their resources on their primary duty to protect workers.**

- **Amend current legislation to allow irregular migrants to effectively seek remedies for violations of their labour rights. In particular through:**

- **Amending current legislation to ensure that victims of labour exploitation are allowed to stay in the country at least for the duration of any relevant legal proceedings, be they criminal, civil or administrative;**
- **Providing legal assistance and support to migrant workers who are victims of labour exploitation, in order to facilitate their accessing justice.**

- **Ensure that the scope of the legal protection offered to migrant workers at the domestic level is in line with the requirements of relevant international instruments.**

¹ See, for example: Klara Skrivankova, *Between decent work and forced labour: examining the continuum of exploitation*, JRF programme paper, November 2010.

² Foreword to the book *Siamo italiani – Die Italiener*, by Alexander J. Seiler, Zürich: EVZ 1965, Amnesty International's translation from the German original "*Man hat Arbeitskräfte gerufen, und es kommen Menschen*".

³ Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p273.

⁴ Ibid. p394.

⁵ Amnesty International's interview with Giovanni Gioia, FLAI-CGIL Latina, Latina area, 18 June 2012.

⁶ Marco Omizzolo, 'I Sikh a Latina, una storia trentennale di lavoro agricolo', *Libertà Civili*, September-October 2010, at p110.

⁷ *Contratto Provinciale di Lavoro per gli operai agricoli e florovivaisti della Provincia di Latina: 1 Gennaio 2008 -31 Dicembre 2011*, Latina, 24 July 2008; *Tabella paga degli operai agricoli e florovivaistici della provincial di Latina in vigore dal 1/5/2010*. This is an agreement between trade unions and employers' organisations, which determines minimum standards for individual work contracts. In June 2012 it was in the process of being re-negotiated.

⁸ Amnesty International's interview with "Chintu" (not his real name), Indian migrant worker, Latina area, June 2012.

⁹ Amnesty International's interview with "Bobby" (not his real name), Indian migrant worker, Latina area, 19 June 2012.

¹⁰ Amnesty International's interviews with "Sukhi" and "Monu" (not their real names), Indian migrant workers, Latina area, June 2012.

¹¹ Amnesty International's interviews with "Sukhi" and "Preet" (not their real names), Indian migrant workers, Latina area, June 2012.

¹² Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para18.

¹³ UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens, 10 January 2004, para35.

¹⁴ Source: Questura di Caserta, 12 June 2012.

¹⁵ Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p100.

¹⁶ IOM, *Praesidium V: Rapporto sulla situazione dei migranti presenti nella provincial di Caserta e nell'area di Castel Volturno, Gennaio-Aprile 2010*, p3.

¹⁷ Amnesty International's interview with Angelo Paoella, FLAI-CGIL, Caserta, 9 July 2012.

¹⁸ Amnesty International's interviews with "Jean-Baptiste" and "Ali" (not their real names), migrant workers from Burkina Faso and Tunisia, Caserta area, June-July 2012.

¹⁹ Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Côte d'Ivoire, Caserta area, 5 July 2012.

²⁰ Amnesty International's interview with "Ali" (not his real name), a Tunisian migrant worker, Caserta area, 29 June and 10 July 2012.

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- ²¹ Art. 3.4, Legislative Decree no. 286 of 25 July 1998, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" (Consolidated Act on Immigration).
- ²² Ibid. Art. 22.2.
- ²³ Ibid. Art. 22.4.
- ²⁴ Ibid. Art. 5.3-bis and 22.6.
- ²⁵ Ibid. Art. 5.3-bis and 5.3-ter.
- ²⁶ In 2011 employers submitted about 400,000 applications for contractual employment of migrant workers, nearly four times the number of available places under the quota set for that year (i.e. 98,080). Rete Europea Migrazioni (EMN) Italia, *Quarto Rapporto EMN Italia: Canali Migratori, Visti e flussi irregolari*, IDOS, Roma, March 2012, p89.
- ²⁷ For example: Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Côte d'Ivoire, Caserta area, 5 July 2012.
- ²⁸ Tito Boeri, "Una ricetta contro la crisi economica? Cambiare la Bossi-Fini e le politiche sull'asilo", in ReteRadici and Fondazione IntegrAzione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p.122.
- ²⁹ Amnesty International's interviews with "Monu" and "Chintu" (not their real names), Indian migrant workers, Latina area, June 2012.
- ³⁰ IOM, *"Stagione amara": Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010.
- ³¹ Naga, *Truffasi – Quando la legge crea illegalità: osservatorio sulla "sanatoria colf e badanti" del 2009*, Milano: June 2011, p4.
- ³² Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p144.
- ³³ Francesco Carchedi (ed.), *Schiavitù di ritorno: Il fenomeno del lavoro gravemente sfruttato*, Maggioli Editore, 2010, p53.
- ³⁴ Art. 2.5, Consolidated Act on Immigration.
- ³⁵ ILO Committee of Experts on the Application of Conventions and Recommendations, Direct Request concerning the Migrant Workers (Supplementary provisions) Convention, 1975 (No. 143): Italy, adopted 2009, published 99th ILC session (2010).
- ³⁶ Committee in the Elimination of Racial Discrimination, Concluding observations: Italy, UN Doc. CERD/C/ITA/CO/16-18, 9 March 2012, para23.
- ³⁷ Preamble, Decree-Law No. 92/2008 of 23 May 2008, "Urgent measures concerning public security" (translation by Amnesty International).
- ³⁸ Art. 1.16, Law No. 94/2009 of 15 July 2009, "Provisions concerning public security".
- ³⁹ Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/7/4, 10 January 2008, par53. See also: UN Special Rapporteur on the human rights of migrants, Report to the Human Rights Council, Un Doc. A/HRC/20/24, 2 April 2012, par13.
- ⁴⁰ Art. 361 and 362 of the Italian Criminal Code.
- ⁴¹ National media have reported several cases of irregular migrants who decided not to report the labour abuses suffered due to the risk of being charged with the crime of "illegal entry and stay". See for example: Fabrizio Gatti, "Campania, schiavi senza fine", *L'Espresso*, 17 December 2010.
- ⁴² ILO Committee of Experts on the Application of Conventions and Recommendations, Observation concerning Labour Inspection Convention, 1947 (No. 81): Italy, adopted 2009, published 99th ILC session (2010).

⁴³ Ministero del Lavoro e delle Politiche Sociali, Direzione Regionale del Lavoro per il Lazio, *Attività ispettiva e stato del mercato del lavoro: Relazione di sintesi – anno 2011*, 3 April 2012, p20.

⁴⁴ For example: Amnesty International's interview with "Mithu" (not his real name) an Indian migrant worker, Latina area, 18 June 2012.

⁴⁵ Amnesty International's interview with "Monu" (not his real name), Indian migrant worker, Latina area, 22 June 2012.

⁴⁶ Amnesty international's interview with an Indian migrant worker who preferred to stay anonymous, Latina area, June 2012.

⁴⁷ *Relazione tecnica*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012.

⁴⁸ UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations: Italy, UN Doc. CEDAW/C/ITA/CO/6, 26 July 2011, par28.

⁴⁹ Art. 603-bis, Criminal Code.

⁵⁰ David Mancini, "La tutela dal grave sfruttamento lavorativo ed il nuovo articolo 603bis c.p.", *Altalex*, 26 September 2011.

⁵¹ Associazione "Comitato per il Centro Sociale", *Osservazioni e proposte emendative relativamente allo schema di decreto legislativo recante attuazione della direttiva 2009/52/CE*, 21 May 2012, p3.

⁵² Legislative decree No. 109 of 16 July 2012, "Implementation of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals" ("Rosarno Law").

⁵³ Ibid.

⁵⁴ *Relazione tecnica*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012.

⁵⁵ For example: UN Committee on Economic, Social and Cultural Rights, General Comment 18: The right to work (Article 6), Un Doc. E/C.12/GC/18, 6 February 2006, para48.

⁵⁶ 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, p3.

⁵⁷ IOM, "*Stagione amara*": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p7.

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