

# Committee on the Elimination of Racial Discrimination: Review of Italy

MARCH 5, 2012

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## TABLE OF CONTENTS

Executive Summary.....	page 2
CERD Violations by Italy.....	page 3
Article 2.....	page 3
Article 3.....	page 5
Article 4.....	page 6
Article 5.....	page 6
Article 6.....	page 10
Conclusions and Recommendations.....	page 11

# I. Executive Summary

The Associazione Studi Giuridici sull'Immigrazione (“ASGI”) and the Open Society Justice Initiative (“Justice Initiative”) tender this submission to the Committee on the Elimination of Racial Discrimination (“Committee”) in preparation for its periodic review of Italy on March 5, 2012. The report highlights increasing levels of discrimination against minority groups since Italy’s last review in 2008 – specifically (i) Roma and Sinti communities and (ii) migrants living in Italy – which has resulted in violations of Article 2, 3, 4, 5 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).

ASGI is an association founded in 1990, which unites lawyers, university professors, paralegals and jurists focused on discrimination issues. ASGI aims to promote research, analysis, dissemination of information, advocacy and training on juridical problems relating to discrimination on grounds of race, ethnicity and national origin, immigration and asylum, statelessness and citizenship, at the domestic, European and international level. The Justice Initiative uses law to empower and protect people around the world. Through litigation, advocacy, research and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. The Justice Initiative has worked on discrimination in Italy since 2009, undertaking strategic litigation and advocacy to promote human rights for minority groups, particularly Roma and Sinti.

Since 2008, discriminatory national emergency laws have been used by national and local authorities to systematically undermine basic rights of the estimated 170,000 Roma and Sinti living in Italy, and, more broadly, of the 4.5 million non-citizens regularly resident in Italy, under the guise of maintaining “security” and “public order.” The laws were originally enacted in response to both the existence of “nomad camps” and a purported “influx of third-country nationals” into Italy. The provisions directly target Roma and Sinti communities, and both third-country nationals and citizens from Eastern Europe (especially Romanians) have been increasingly targeted as perceived security threats. Instead of making Italy safer, these laws and the policies that underlie them have marginalized, demonized and segregated vulnerable communities from the mainstream population and further hardened public attitudes towards these groups. To help redress this marked regression in rights protections and norms, we ask that the Committee recommend that the Italian authorities:

- Reverse the discriminatory impact of measures adopted under the Nomad Emergency Decree – especially evictions, repatriations, housing segregation, and the retention of personal data in ethnic databases – and work systematically to redress these practices, including through new policies aimed at promoting inclusion of Roma and Sinti;
- Reverse the discriminatory impact of the Migration Emergency Decrees and work to redress it, including through the adoption of a comprehensive policy ensuring the full equality of non-citizens in access to justice, improved conditions for migrant detention centers (MDCs) and the collection and publication of reliable data on detention orders affecting migrants and asylum seekers;
- Improve enforcement of laws guaranteeing equal application of the law and non-discrimination in the enjoyment of all rights and benefits, including education, housing, social services and the administration of justice;

- Condemn and disavow statements by political figures which promote and incite racial discrimination and hatred, and strengthen the enforcement of laws which outlaw hate speech; and
- Commit to reforming laws and institutions set up to address ethnic discrimination and ensure their efficacy and accessibility, including by:
  - a) reforming the National Office Against Racial Discrimination so as to make it a fully independent human rights institution, endowed with powers to judicially pursue discrimination complaints;
  - b) eliminating the requirement that NGOs be registered in a government-approved “list” in order to be endowed with legal standing to file racial discrimination complaints; and
  - c) introducing public support, or waiving fees, for filing racial discrimination complaints, including collective complaints.

## II. Violations by Italy

### A. Article 2

1. CERD Article 2(1)(a) requires that Italy condemn and work to eliminate racial discrimination, including by ensuring that “all public authorities and public institutions, national and local” avoid any racially discriminatory act or practice. Article 2(1)(c) further obliges the Italian government to “review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” In its General Recommendation XXVII, this Committee acknowledged discrimination against Roma as a specific concern which States must take into account when enacting, amending or reviewing legislation. It also recognized that reforming law on the books is only one step: “national strategies and programmes and express determined political will and moral leadership” are all necessary elements of “improving the situation of Roma and their protection against discrimination by State bodies.” Meanwhile, General Recommendation XXX addresses the rights of non-citizens, underscoring that “differential treatment based on citizenship or immigration status” constitutes discrimination where it violates the principle of proportionality.
2. In May 2008, just after Italy was last reviewed by this Committee, the government adopted the “Declaration of the state of emergency with regard to the settlements of nomad communities in the territories of the Campania, Lazio and Lombardia regions” (the “**Nomad Emergency Decree**,” or **NED**).<sup>i</sup> The NED granted to the prefects of Rome, Milan and Naples emergency powers “derogating from the rules of law in force” to adopt measures targeted, directly or indirectly, against “nomads” and undocumented non-citizens residing in “nomad camps.”<sup>ii</sup> At least 95 percent of residents of the “nomad camps” belonged to the Roma and Sinti communities.<sup>iii</sup> The specific emergency powers granted included the monitoring of formal and informal camps, identification and census of those in the camps, including minors, and provided for fingerprinting and photographs of residents. Measures taken pursuant to the NED also included expulsion of persons with irregular residency status, activities aimed at clearing “camps for nomads” and even evictions of camp residents, as well as the opening of new, more isolated, “camps for nomads” on the outskirts of urban centers. The Implementing Guidelines, adopted a few months after the

emergency measures – and only after a wave of domestic and international protest – indicated that such activities would be carried out only for the purpose of improving the conditions of nomad communities and with due respect for human rights standards.<sup>iv</sup> The Guidelines, however, were not legally binding and have been largely ignored in practice. In the following years, the state of emergency justifying the NED was repeatedly extended: in May 2009 the emergency was deemed to incorporate two new regions, Piedmont and Veneto;<sup>v</sup> in 2010, the powers were renewed in all five regions through 2011.<sup>vi</sup>

3. The enactment and repeated extension of the NED directly violated Italy’s obligations under CERD Article 2(1), a fact recently recognized by Italy’s own national courts. After 42 months of the NED’s operation, the Italian Council of State – Italy’s highest administrative tribunal – finally struck down the NED and its implementing orders on November 16, 2011.<sup>vii</sup> The Council found the emergency measures unlawful because they were not premised upon a genuine emergency connected to the presence of Roma and Sinti people. The Council further found that provisions of the implementing regulations applicable in Milan and Rome (the “Nomad Camps Regulations”) were disproportionate and served no legitimate aim. These regulations hindered freedom of movement for camp inhabitants, including by requiring an identification card to obtain a camp residence permit, mandating registration of guests at the camp entrances and permitting organized surveillance of the camps.<sup>viii</sup>
4. Outside the context of the NED, and only two months after this Committee reached its Concluding Observations from Italy’s 2008 periodic review, Italy passed a national law allowing mayors to adopt discriminatory local ordinances relating to public safety and urban security *outside* of emergency contexts.<sup>ix</sup> This action directly contradicts the Committee’s specific recommendations urging Italy to address discrimination against Roma and Sinti communities. Instead, local public administrations have used their new powers to disproportionately target Roma and Sinti, as well as non-citizens and minorities in general (focusing, for example, on rest stops for caravans and motor homes in urban areas, begging, the opening hours of small grocery stores, the opening of call centers and the occupation of public land).<sup>x</sup> These discriminatory ordinances still remain in force.
5. Meanwhile, since July 2008, the perceived “exceptional influx of third country nationals” provided a political basis for introducing a series of “**Migration Emergency Decrees**” (MEDs). These decrees were premised on the same statute on civil protection used to enact the NED, and extended across the whole country.<sup>xi</sup> They allowed for extraordinary powers in order to manage the “influx of migrants”, including through detention in special centers. In July 2009, the Italian parliament also adopted Law no. 94/2009 on Provisions Relating to Public Safety (the “**Security Package**”) criminalizing irregular entry into Italy as well as stay without a valid residence permit. Earlier, in 2008, a predecessor law to the Security Package added an automatic penalty enhancement applicable to *any* crime committed by an “irregular” migrant. The 2009 Security Package went further: converting “illegal entry and stay” from an administrative offence into a criminal act. It levied fines ranging from €5,000 to €10,000 for unauthorized stay in Italy. Failure to comply with expulsion orders was punishable by up to four years’ imprisonment. The law also allowed authorities to detain undocumented migrants for up to six months before expulsion from Italy, and stripped undocumented persons of the right to marry in Italy.<sup>xii</sup>
6. The implementation of the MEDs and the Security Package has specifically targeted Roma and Sinti populations and clearly increased the vulnerability of regular and irregular migrants as well as all undocumented persons in Italy. These laws, like the NED, allow for inappropriate and dangerous levels of discretion, leaving them open to abuse through discriminatory application, a

prospect which has rapidly become a reality in Italy since 2008. Italy's actions contravene the grounding Convention principle of non-discrimination, bearing no reasonable relationship of proportionality to any legitimate security-related aim.

7. For more than three years within the review period, the government failed to comply with its most fundamental CERD obligations. In fact, it prolonged legislation that disproportionately targeted Roma and Sinti communities and adopted complementary measures that unjustifiably undermine the basic rights and security of minorities and migrants residing in Italy. As will be further discussed below, the effects of these violations are still impacting the daily lives of marginalized Roma and Sinti minorities, and migrant communities in Italy today.

### B. Article 3

8. Italy is required to “prevent, prohibit and eradicate” racial segregation under CERD Article 3. Yet this obligation is routinely violated by Italy. In its Concluding Observations the Committee recognized this issue, noting with concern that “Roma and Sinti still live in conditions of de facto segregation in camps, in which they lack access to the most basic facilities.” It recommended that the Italian government implement projects and policies aimed at “avoiding segregation of Roma communities in housing.” The Committee’s General Recommendation XXVII also obliges Italy to “act firmly against any local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated without access to health care and other facilities.”
9. Segregation of Roma and Sinti in Italy stems most directly from their widespread lack of documentation, and particularly the lack of legal residence permits. Roma and Sinti lack such documentation because they are often unable to comply with requirements for establishing permanent residence, including employment, regular income and housing. Although half of the Roma and Sinti present Italy are Italian citizens, at least several thousand among them are stateless, in most cases as a result of state succession after the breakup of the former Yugoslavia. Statelessness is an acute form of legal and cultural vulnerability that the Committee urged member states to reduce in General Recommendation XXX. Article 5(d)(iii) also requires States to prohibit discrimination in enjoyment of the right to nationality. Yet Italian authorities have failed to provide meaningful pathways to citizenship for stateless Roma and Sinti. They have done so principally by erecting undue procedural barriers, preventing access to both citizenship for Roma and Sinti and, where appropriate, legal recognition of an individual’s stateless status. Because of their legal vulnerability, Roma and Sinti are removed to “equipped” or “authorized” camps, in impoverished zones on the periphery of urban centers. The absence of citizenship and/or legal residence status often leaves them no other option.
10. Since the Committee issued its 2008 Concluding Observations, Italian authorities have introduced further measures that compounded the separation of Roma and Sinti communities from the mainstream Italian population. In Rome, pursuant to the NED, Roma and Sinti families were targeted in a series of evictions during the reporting period.<sup>xiii</sup> These evictions from informal camps led to the relocation of Roma and Sinti families to authorized camps outside the city, cutting off access to basic state services. Meanwhile, by April 2011, the Milan municipality carried out 500 evictions over a period of four years,<sup>xiv</sup> often performed repeatedly against the same households.<sup>xv</sup> The affected families were also placed in segregated camps away from the rest of the city’s population. These measures directly contravene CERD Article 3, ignore this Committee’s 2008 recommendation urging restraint from the segregation of Roma and Sinti, and ignore General

Comment XXVI's requirement to act against local measures designed to evict and expel Roma. Such measures have also impacted the CERD Article 5 housing rights of Roma and Sinti, as will be discussed below.

### C. Article 4

11. Under CERD Article 4, Italy is obliged to condemn any attempts to “justify or promote racial hatred or discrimination in any form,” including by undertaking positive measures to “eradicate all incitement to, or acts of” such discrimination. In its 2008 Concluding Observations on Italy, the Committee raised concerns about reported incidents of hate speech, including statements attributed to politicians that target foreign nationals and Roma. It recommended that Italy both increase “efforts to prevent racially motivated offences and hate speech” and apply its existing criminal sanctions to those who violate this norm. The Committee also encouraged Italy to “counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin.”
12. Discriminatory language, however, continued to characterize political debate and media discourse during the reporting period.<sup>xvi</sup> The most common and deeply rooted stereotypes depict migrants and Roma as responsible for any perceived rise in delinquent behavior such as rape, robbery and assault.<sup>xvii</sup> Officially dubbing the draconian 2009 immigration law amendments the “Security Package” reinforced this stereotype, while adding a government imprimatur. In addition, members of ethnic and religious minorities are often represented as fundamentalists, extremists and terrorists in government discourse.<sup>xviii</sup> In the lead-up to the 2011 mayoral elections, for example, negative images and fear-mongering of Roma and foreigners emanated from the very top of Italy's political chain: the country's former Prime Minister, Silvio Berlusconi, warned that Milan would turn into a “Gypsytown full of Roma camps, besieged by foreigners” if his candidate for mayor – who herself was criticized for running a deeply xenophobic campaign – was defeated.<sup>xix</sup> The failure to condemn and disavow such discriminatory statements by political figures runs counter to Italy's CERD obligations. Political figures engaging in such activities should suffer official public condemnation and/or political sanction where appropriate.
13. Outside the sphere of political discourse, enforcement of laws sanctioning members of the public who are not in political office but who engage in criminal hate speech remains insufficient. In 2006, the government weakened an existing criminal law prohibiting race discrimination and hate speech (Law 205/1993, the “Mancino Law”) by cutting in half the penalty for the offences of propaganda, incitement to racial or religious discrimination, promotion of ideas or theories of superiority of one race or group of person of one color or ethnic origin. Italy's weak and underused legal regime to combat racial hate speech by members of the public derogates from Italy's primary obligations under CERD Article 4, despite the Committee's recommendations to the contrary.

### D. Article 5

14. Non-discrimination guarantees in relation to specific rights are set out in CERD's Article 5. This provision requires Italy to guarantee the right of “equality before the law” to everyone “without distinction as to race, colour, or national or ethnic origin.” It sets out a list of rights to which this principle applies, including the right to equal treatment before the tribunals (Article 5(a)), the right to work (Article 5(e)(i)), the right to housing (Article 5(e)(iii)) and the right to social security and social services (Article 5(e)(iv)). Though CERD does not provide an explicit right to privacy, the Committee has recognized in its General Recommendation XX that “the rights and freedoms

mentioned in Article 5 do not constitute an exhaustive list.” For the purposes of this submission, the protection of “other civil rights” under Article 5(d) is understood to include the right to privacy.

#### Right to Equal Treatment before Tribunals and Other Organs Administering Justice

15. In 2009, alongside the new crime of “illegal entry and stay” in Italy, the Security Package instituted a new judicial procedure, still in place today, to validate the detention of undocumented migrants, with the aim of expelling them from the country. Under this procedure, lay judges, and not regular judges, have exclusive discretion to detain undocumented individuals, for a period of up to 18 months in “**migrant detention centers**” (MDCs). This practice clearly establishes an undue difference of treatment with respect to migrant detainees. In addition, the period of administrative detention was expanded in the past year alone from a three month maximum to 18 months, after the enactment of Law 129/2011. Because lay judges are paid based on the number of the cases that they are able to process, incentives favor increased cases of prolonged detention for undocumented migrants. MDCs are often located far from urban areas and are difficult for lawyers and paralegals to access, making it harder for detainees to challenge their detention. Currently no data is available from the government on the number of orders confirming detention for undocumented migrants, transfers in and out of the MDCs, the number of asylum-seekers held in MDCs<sup>xx</sup> or the outcome of the asylum applications submitted from within MDCs.<sup>xxi</sup> The lack of accurate information on detention practices further compounds efforts to challenge these practices and ensure that basic rights are protected.
16. Even outside the context of MDCs, non-nationals, refugees, minorities and stateless individuals face substantial barriers to the full enjoyment of the right to equal treatment in access to justice. In particular, practical access to legal aid varies tremendously from province to province within Italy, as it is up to local bar associations to determine an applicant’s eligibility for aid.<sup>xxii</sup> Judges can ultimately overturn decisions denying access to legal aid, but any such decisions do not apply to costs already incurred.

#### Right to Work

17. CERD Article 5(e)(i) protects “the rights to work, to free choice of employment, to just and favourable conditions of work, [and] to protection against unemployment....” General Recommendation XXX urges States to “remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the area[] of . . . employment.” States are also encouraged to “[t]ake measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.” Since the last review by the Committee, however, nothing has been done to remove discriminatory formal and informal barriers on access to employment for the 4.5 million legally resident migrants who are non-citizens.
18. Under Italian law, legally resident non-citizens are specifically barred from accessing a wide variety of employment opportunities, even when their immigration status is perfectly regular and they have a permit to work. In particular, this is the case under Article 38 of Legislative Decree 165/01, whereby EU citizens can access all posts in the public administration that do not imply any exercise of public power or do not pertain to the protection of national interest, whereas third-country nationals are completely barred from such positions.<sup>xxiii</sup> Article 10, Attachment A to Royal

Decree no. 148 of 1931, still in force today, limits access to employment in the companies that manage public transport services (i.e. to positions as bus drivers or mechanics) to Italian citizens only. Whereas local courts have at times recognized the unjustified, discriminatory character of such provisions, national authorities have done nothing to remove them.<sup>xxiv</sup>

### Right to Housing

19. Forced evictions (described above under Article 3) have a devastating impact on Roma and Sinti families, which is compounded by the government's failure to provide these families with sufficient housing; in some cases, no alternative housing is provided whatsoever. In Rome, for example, the government planned to create 13 new "villages" under the 2009 "**Nomad Plan for the Capital**" (hereinafter, the "**Nomad Plan**"),<sup>xxv</sup> but not a single development has been built to provide housing for Roma and Sinti who were evicted from informal camps. Instead, municipal authorities directed the overflow of approximately 3,510 evicted Roma and Sinti towards a temporary reception center set up in an old paper mill (*La Cartiera*) on the outskirts of Rome and in existing authorized camps. *La Cartiera* lacks even basic facilities and is used exclusively to house Roma families. Access to it is video-controlled by police and by private security personnel, as is the case in some other authorized camps.<sup>xxvi</sup> Living conditions in the few existing segregated authorized camps deteriorated dramatically as a result of the influx of evicted families.<sup>xxvii</sup>
20. Meanwhile, the biggest authorized camp in Milan – Triboniano – was officially closed on May 2, 2011. According to the Ministry of the Interior, 439 people were moved.<sup>xxviii</sup> In the vast majority of cases, those evicted were not provided with alternative housing. Roma and Sinti are encouraged to find private housing solutions, transfer to other nomad camps or camps for refugees, or repatriate. The local authorities have in fact set up various plans for voluntary and assisted repatriation specifically for Roma and Sinti from EU member states. In these cases, Roma families have been offered sums ranging in between €400 and €1000 to commit to return to their country of origin and stay for a minimum number of years.<sup>xxix</sup> In June 2010, the Municipality of Pisa claimed to have performed at least 100 repatriations to Romania based on a plan adopted in December 2009 using such incentives.<sup>xxx</sup>
21. The vulnerability of Roma and Sinti families in the wake of such evictions and the financial incentives involved often make repatriation the only immediately feasible option – but the existence of such vulnerability cannot relieve the Italian government's obligation to ensure that adequate housing is available for those it forcibly evicts. Italy's failure to provide housing to marginalized target populations in the aftermath of forced evictions violates its obligations under CERD and other international human rights instruments. In 2010, for example, the Council of Europe's Committee of Social Rights, held that the Security Package, the NED and the orders and guidelines implementing these measures violated the prohibition on discrimination and the rights of Roma and Sinti people to adequate housing, social, legal and economic protection, protection against poverty and social exclusion, and the right of migrant Roma and Sinti families to protection and assistance.<sup>xxxi</sup>
22. More generally, Article 11(13) of Law 133/2008 established that low-income third country nationals cannot access rent reimbursements offered by the State unless they have held a certificate of residence in Italy for at least ten years. Accordingly, the majority of foreign migrants lawfully resident in Italy, including but not limited to migrant Roma and Sinti, cannot access this benefit,



which constitutes a key factor for their social inclusion and an essential measure to prevent their segregation from the mainstream population.

23. The new provision set out through Law 133/2008 undermine the principles set out by General Recommendation XXX, according to which States must guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, including by avoiding segregation and ensuring that housing agencies refrain from engaging in discriminatory practices.

#### Right to Social Security and Social Services

24. CERD Article 5(e)(iv) provides for non-discriminatory enjoyment of the “right to public health, medical care, social security and social services.” In addition, General Recommendation XXX urges States to “respect the right of non-citizens to an adequate standard of physical and mental health, by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.”
25. National public welfare measures adopted and implemented by the Italian government contain discriminatory provisions that contravene the broad principles set out in General Recommendation XXX. Italy has consistently denied non-citizens access to benefits designed to ensure a minimum standard of living and health for low income individuals and families. These benefits include the *Carta Acquisti* (“Buyer’s Card”), allowing discounted access to basic goods and services, and the *Cheque* of the National Social Security Institute, meant to assist large, low income families living in conditions of economic hardship.<sup>xxxii</sup> In some cases, access is extended to all EU citizens, but other third-country nationals are routinely excluded from accessing these vital assistance programs. In 2009 faced with infringement proceedings by the European Commission, Italy extended access to the Buyer’s Card to EU citizens and third-country national with long-term residence in Italy. Italian or EU citizenship remains a requirement for access to the *Cheque*, despite several domestic court rulings declaring the practice discriminatory under EU law.<sup>xxxiii</sup>

#### Right to Privacy

26. In its 2008 Concluding Observations, the Committee requested that Italy hold a general census on the “ethnic composition of its population” and recommended that the census should take place “on a voluntary basis with full respect for privacy and anonymity.” Instead, the Italian government, through the NED, initiated a census limited *on strictly ethnic grounds* to Roma and Sinti communities residing in areas covered by the emergency.<sup>xxxiv</sup>
27. The 2008-2009 census was carried out on a plainly discriminatory basis amounting to a violation of the right to equal treatment and to the protection of personal data and privacy. The UN Human Rights Committee has indicated in its General Comment 16 (on the right to respect for privacy) that “the gathering and holding of personal information . . . by public bodies . . . [m]ust be regulated by law.” Individuals must have the “right to ascertain in an intelligible form, whether, and if so, what personal data is stored . . . and for what purposes.” In this case, only Roma were counted and the information provided to the targeted communities was not adequate to ensure informed consent and, in many cases, consent was obtained through fraud.<sup>xxxv</sup> Government officials routinely failed to indicate where the personal data collected through the ethnic census would be kept, how the data would be treated and for what purpose it was being collected. The census was not conducted on a voluntary basis. On the contrary, in several cases the government employed police officers to collect census data and showed no respect for the privacy and anonymity of the individuals concerned, for instance by taking pictures of entire family groups.<sup>xxxvi</sup>

28. Attempts to access or suppress the ethnic census data proved unsuccessful. Applications to access the data filed in Rome were only answered after the intervention of either the Data Protection Authority or the Administrative Tribunal.<sup>xxxvii</sup> In Milan, access was granted directly by the Prefecture, but in both cities the administration, including the Data Protection Authority, refused to erase personal data collected through the census, including when such requests were filed by Italian citizens whose personal data was collected.<sup>xxxviii</sup>
29. The act of creating a database to store personal information on individuals solely on account of their membership in a particular ethnic or social group surely offends the concept of personal privacy within the scope of CERD's protections. Indeed, these actions of the Italian government toward Roma and Sinti violate basic human dignity, a foundational principle underlying all human rights. These actions illustrate perhaps most vividly the severity of Italy's disregard for the letter and spirit of the CERD with respect to Roma and Sinti communities living in its territory.

#### E. Article 6

30. CERD Article 6 requires Italy to provide "effective protection and remedies" against racially discriminatory acts "through competent national tribunals and other State institutions." This provision includes the right to seek "just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." In General Recommendation XXX, the Committee made clear that Article 6 rights extend to non-citizens. Such rights, however, have not been fully realized by Roma, Sinti and non-citizens during the reporting period, both in relation to the NED and more generally.
31. With respect to the NED, while the Council of State ultimately struck down the NED (described above under Article 2), it did not order the destruction of data collected in the course of the ethnic census (also described above), nor did it provide damages or other remedies to the victims of the NED's discriminatory provisions. At the local level, efforts to realize Article 6 rights also faltered. For example, a complaint challenging the NED was rejected by the Milan Tribunal on March 2, 2011. The tribunal, adopting the discriminatory undertones of the NED itself, equated "nomads" with Roma and Sinti, and endorsed the stereotype that Roma settlements are a cause of public, social and environmental degradation, of public disorder and a lack of safety. Specifically, the tribunal stated:

"The court considers that . . . given the mentioned massive presence in the city of Milan of about six thousand nomads . . . . This presence is such as to determine a clear state of deterioration of hygiene, health and socio-environmental conditions, and cause social alarm, understood not only under the safety aspects but also under the point of view of public order."<sup>xxxix</sup>
32. In this case, the court does not appear to be providing protection against racially discriminatory measures, but reinforcing the discriminatory notions underpinning the NED.
33. The widespread prejudice against the Roma and Sinti has penetrated the judicial system. An example can be drawn from a May 2008 Juvenile Court case in Naples, which rejected a motion for the release of a fifteen-year-old Roma girl accused of having kidnapped a baby in Ponticelli (Naples). The decision was grounded on the risk of either flight or recidivism and was justified by the following reasoning:

"The appellant is fully integrated into the typical patterns of Roma culture . . . both her placement in a community or her being put under house arrest are, in

fact, inadequate measures considering the above-mentioned adherence to the Roma cultural patterns, which through the common experiences of group members, lead to a general lack of respect for rules.”<sup>xi</sup>

34. In its 2008 review of Italy, this Committee specifically noted with concern the small number of cases on racial discrimination in Italian courts. The persistent lack of cases, proceedings and convictions relating to acts of racial discrimination recorded in Italy is acknowledged in the submission by the Italian government.<sup>xii</sup> Here, the government points to the lack awareness of the available enforcement possibilities and the high costs of the proceedings. To overcome these shortcomings, however, the government continues to rely solely on the activities and work of private actors (associations and professional organizations) without proposing any real solutions.
35. But more effective solutions are available. Italy’s Office against Racial Discrimination (UNAR) is currently devoid of the operational autonomy required by European Union Directive 2000/43/EC and of the independence that, according to the Paris Principles, a national human rights institution should enjoy.<sup>xiii</sup> UNAR’s activities are severely limited by its statute: insofar as UNAR has no judicial standing, its main activities consist in mediating and referring victims to anti-discrimination NGOs. With independent legal standing, UNAR could facilitate increased access to justice for victims of discrimination in Italy. Under Italian law, only NGOs that are formally registered on a list of anti-discrimination NGOs (the “List”) have legal standing in Italian courts. Article 6 of Legislative Decree 215/2003, the law establishing this requirement, grants substantial executive discretion to the authorities responsible for deciding which NGOs can join the “List,” in this case the Minister of Labor and Social Affairs and the Minister for Equal Opportunity. The requirement of prior enrolment in the “List” in order to gain legal standing is without any objective justification. Italy could also remedy the high cost of legal proceedings by permitting the possibility of collective actions, lowering the burden on individual applicants wishing to bring anti-discrimination challenges.

### III. Conclusions and Recommendations

The situation for Roma, Sinti and migrants (including asylum seekers) in Italy has deteriorated, rather than improved, since the Committee last reviewed the country’s CERD record in 2008. Not only have a number of the Committee’s Concluding Observations been ignored, but some were systematically violated and undermined. We urge the Committee to reaffirm its commitment to the principles and outstanding concerns with Italy’s record that it identified in 2008, and also to include the following recommendations in its 2012 Concluding Observations that Italy should:

- **Recognize that measures implemented under the Nomad Emergency Decree were racially discriminatory** and fostered segregation. Urgent measures are needed to redress its ongoing impacts, including new policies aimed at promoting inclusion of Roma and Sinti and combatting statelessness.
- **Recognize the discriminatory impact of the Migration Emergency Decrees and work to redress it**, including through the adoption of a comprehensive policy ensuring the full equality of non-citizens in the access to the justice, improved conditions for migrant detention centers (MDCs) and the collection and publication of reliable data on detention orders affecting migrants and asylum seekers.

- **Recognize the promotion and incitement to racial discrimination and hatred by political figures must be rebuked by the Italian government and laws covering criminal hate speech by members of the public more actively enforced.**
- **Suspend forced evictions, expulsions and voluntary repatriation programs for Roma and Sinti**, and ensure that any order for individuals and families to move requires advance notification to ensure a right to appeal and compensation.
- **Discontinue immediately the differential treatment of migrants and other vulnerable groups in access to justice**, both as concerns judicial decisions concerning non-criminal detention and access to legal aid.
- **Delete data obtained during the Nomad Census of 2008/2009** and ensure that information on ethnic discrimination and the ethnic composition of the Italian population only be collected through a general survey of the entire population, implemented on a voluntary, anonymous basis and in full respect of the protection of personal data, so as to allow the development of policies for the inclusion of migrant residents and minorities.
- **Discontinue the differential treatment of legally resident third country nationals in access to public employment, housing contribution and other welfare provisions for low income families.**
- **Reform mechanisms to redress racial discrimination to ensure their efficacy and accessibility**, in particular by a) reforming UNAR so as to make it a fully independent human rights institution, endowed with powers to judicially pursue discrimination complaints, b) eliminating the requirement that NGOs be registered in a government-approved “List” in order to be endowed with legal standing for racial discrimination pursuits and c) introducing public support or waiving the fees for filing racial discrimination complaints, including collective complaints.
- **Translate this Committee’s Concluding Observations** into Italian and disseminate them to the media and throughout government agencies.
- **Recognize Roma and Sinti as a national minority**, to ensure the protection of their culture and language, while also promoting their inclusion and combatting statelessness.

## ENDNOTES

<sup>i</sup> See, e.g., Decree of the President of the Council of Ministers no. 32041 of 21 May 2008; Ordinances of the President of the Council of Ministers no. 3678, of 30 May 2008 (permitting urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Campania region (no. 3678); in the territory of the Lombardy region (no. 3677); and in the territory of the Lazio region (no. 3673)).

<sup>ii</sup> With regard to use of the term “nomad(s)” by the Italian authorities it should be noted that the OSCE has emphasised that: “the Roma and Sinti are still widely considered by the Italian public to be a nomadic population, even though the majority of them have in fact been settled for a long time.” OSCE, *Assessment of the Human Rights Situation of Roma and Sinti in Italy, Report of a fact-finding mission to Milan, Naples and Rome on 20-26 July 2008*, March 2009, at 13.

<sup>iii</sup> ERRC, et al., *Memorandum to the European Commission* (2009), at para. 22, available at <http://www.soros.org/initiatives/justice/litigation/ec-v-italy-20100910/memorandum-to-the-european-commission-20090504.pdf>.

<sup>iv</sup> Guidelines to implement Ordinances nos. 3676, 3677, 3678 of 30 May 2008 (July 17, 2008). The Guidelines were adopted only after some of the most prominent international newspapers published pictures of the fingerprints collected through the census, leading European Commissioner Jacques Barrot to ask the Italian government to clarify the purpose of the census.

<sup>v</sup> See Decree of the President of the Council of Ministers no. 38839 of 28 May 2009 and ordinances nos. 3776 and 38841 of 1 June 2009, all published in Official Gazette No. 129 of 6 June 2009.

<sup>vi</sup> See Official Gazette No. 304 of 30 December 2010.

<sup>vii</sup> *Ministry of the Interior and Others v. ERRC and Others*, Italian Council of State, No. 6050, November 16, 2011.

<sup>viii</sup> See Commissioner delegate for the nomad emergency in Lombardy, “Regulation for the areas reserved for the nomads in the municipality of Milan,” February 5, 2009, available at:

[http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0845\\_regolamento20090205.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0845_regolamento20090205.pdf);

Commissioner delegate for the nomad emergency in the Lazio, “Regulation for the management of equipped villages for nomad communities in the Lazio Region,” February 18, 2009, available at:

[http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0716\\_regolamento\\_nomadi\\_roma.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0716_regolamento_nomadi_roma.pdf).

<sup>ix</sup> In July 2011 the Constitutional Court declared these rules unconstitutional if used outside of the context of an extreme urgency (Judgment No. 115/2011).

<sup>x</sup> See Report of Cittalia (2009), *Oltre le ordinanze. I sindaci e la sicurezza urbana* available at [http://www.cittalia.it/index.php?option=com\\_content&view=article&id=205:oltre-le-ordinanze-i-sindaci-e-la-sicurezza-urbana&catid=1:documenti-cittalia](http://www.cittalia.it/index.php?option=com_content&view=article&id=205:oltre-le-ordinanze-i-sindaci-e-la-sicurezza-urbana&catid=1:documenti-cittalia).

<sup>xi</sup> The state of emergency addressed to the extraordinary influx of migrants was first adopted in 2002 and prolonged yearly until 2012. During the reporting period, the Decree of the President of the Council of Ministers, dated July 25, 2008, extended the state of emergency to the entire national territory to “contrast the exceptional influx of third country nationals.” This national emergency was prolonged twice, first on December 18, 2008 through 2009, and on November 19, 2009 through 2010. In 2011, a new Decree of the President of the Council of Ministers of 12 February 2011 established a state of humanitarian emergency in the national territory due to the extraordinary influx of migrants fleeing the North African unrest. On November 22, 2011, the new Italian cabinet, lead by Mario Monti, confirmed the extension of the emergency through 2012.

<sup>xii</sup> See Law 125/2008. In 2010 and 2011, respectively, the Italian Constitutional Court found the general aggravating circumstance as well as the article that made it impossible for irregular migrants to marry to be in breach of the principles of equality, reasonableness and proportionality (Constitutional Court Case No. 249/2010 and 245/2011). The Court of Justice of the European Union struck down the provision of the security package providing for automatic imprisonment of undocumented migrants found in a status of non-compliance with a removal order. See Court of Justice of the European Union, *El Dridi*, application no. C-61/11, April 28, 2011.

<sup>xiii</sup> See Open Society Foundations and Open Society Justice Initiative (2010), *Roma in Italy – briefing to the European Commission*, available at <http://www.soros.org/initiatives/justice/litigation/ec-v-italy-20100910/memorandum-italy-ec-20101018.pdf>.

<sup>xiv</sup> See, e.g., [http://milano.repubblica.it/cronaca/2011/04/27/news/rom\\_de\\_corato\\_festeggia\\_i\\_cinquecento\\_sgomberi-15419177/](http://milano.repubblica.it/cronaca/2011/04/27/news/rom_de_corato_festeggia_i_cinquecento_sgomberi-15419177/).

<sup>xv</sup> See Complaint filed by NAGA to the European Commission, July 19, 2010 [http://www.naga.it/tl\\_files/naga/documenti/denuncia%2020%20luglio%202010.pdf](http://www.naga.it/tl_files/naga/documenti/denuncia%2020%20luglio%202010.pdf).

<sup>xvi</sup> On the issue of racism in the media, see the 2008 report produced by COSPE for the European Network Against Racism (ENAR), *Racism in Italy*, at 26, available at <http://www.cospe.it/cospe/old/documenti.php>; and the video produced by COSPE, “*Basta col razzismo nei media*,” available at [http://www.youtube.com/watch?v=8\\_pPFoVtlxE](http://www.youtube.com/watch?v=8_pPFoVtlxE).

<sup>xvii</sup> See statements made by Gianni Alemanno, Mayor of Rome, during a popular political television show: “Sexual violence is a method through which foreigners intend to attack the Italian institutions,” available at <http://www.youtube.com/watch?v=9wDFDLX3FDQ>. Mario Borghezio (a Member of the European Parliament from the Northern League) organized a campaign, following several cases of sexual violence committed by Romanian citizens, in which he said, “Enough outsiders, . . . “[w]e must send them away,” “[w]e should zic-zac [emasculate and castrate] the outsiders,” <http://www.youtube.com/watch?v=EP-W7tjixdM>.

<sup>xviii</sup> Mario Borghezio proposes a “tax measure to discourage births by Muslim parents.” In fact, he says, “[t]he birth rate of Muslim immigrants is twice that of Christians and this is a real danger. The great Islamic advance into Europe,

seemingly unstoppable, could make up the future army of Bin Laden in our urban ghettos.” <http://www.giornalettismo.com/archives/124338/borghesio-questi-islamici-fanno-troppi-figli-tassiamoli/>.

<sup>xix</sup> See “Silvio Berlusconi Warns Milan Could Become ‘Gypsytown,’” BBC website, May 23, 2011, <http://www.bbc.co.uk/news/world-europe-13507941>.

<sup>xx</sup> Italian legislation allows asylum-seekers to be detained in MDCs when they have already received expulsion orders, or they have been convicted of certain types of crimes, or they are subject to the conditions of Article 1, para. F of the Geneva Convention of 1951 (Art. 21 of Legislative Decree no. 25/2008, as amended).

<sup>xxi</sup> See ASGI, “The right to protection. International protection in Italy -- what is the future? Study on the status of the asylum system in Italy and proposals for its development,” European Refugee Fund - 2009 Annual Programme - Action 2.1.A, August 2011.

<sup>xxii</sup> According to the Consolidated Act on Legal Costs (DPCM 115/2002, articles 70-94) in civil proceedings the application should be presented to the Bar Council. The denial of access to legal aid in the first instance by the Bar Council can then be overturned by a judge, but without compensation for costs already incurred (Art. 126.3).

<sup>xxiii</sup> Several lower courts have affirmed that the provisions of LD 165/01 should be considered implicitly repealed under the principle of equal treatment in employment between nationals and legally resident non-EU countries citizens provided in Article 2.2 of LD. 286/98 (the Immigration code). *Tribunale di Milano*, 5 Ottobre 2011, *Porcelli Romero et. Al. v. ASAP Trivulzio*. The National office against Racial Discrimination also supports this interpretation, see, e.g., that office’s opinion dated June 6, 2011, available at: [http://www.asgi.it/public/parser\\_download/save/parere\\_unar\\_infermieri\\_concorso\\_pubblico.pdf](http://www.asgi.it/public/parser_download/save/parere_unar_infermieri_concorso_pubblico.pdf).

<sup>xxiv</sup> Just in a single case, the *Tribunale del lavoro di Milano* ruled that 1931 legislation should be implicitly considered as repealed according to the principle of equal treatment established by the 1998 Immigration Code (*Tribunale di Milano*, 20 September 2009, *ASGI v. Azienda Trasporti Milanese*). Yet most local public transport companies continue to require Italian citizenship to compete for driver positions.

<sup>xxv</sup> The Prefect of Rome, Giuseppe Pecoraro, and Mayor Gianni Alemanno presented the “Nomad Plan for the Capital” on July 31, 2009. The plan envisioned the possibility of including up to 6,000 individuals, beyond the 7,177 already counted in the territory of Rome.

<sup>xxvi</sup> Cf. Associazione 21 luglio, *La Casa di Carta*. Video of the conditions of the Roma living in the ex-reception centre, available at <http://www.redattoresociale.it/Video.aspx?id=355181>.

<sup>xxvii</sup> E.g. as documented for the authorized camp of “Via Salone,” which, in 2010, hosted 1,076 Roma and Sinti, more than doubling the formal capacity of the camp. Cf. Associazione 21 luglio, *Esclusi e Ammassati*, at 14.

<sup>xxviii</sup> See

[http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/minoranze/00825\\_2011\\_05\\_02\\_sgombero\\_campo\\_nomadi\\_Triboniano.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/minoranze/00825_2011_05_02_sgombero_campo_nomadi_Triboniano.html).

<sup>xxix</sup> See the Repatriation Agreement Form on file with the authors.

<sup>xxx</sup> See Open Society Institute and Open Society Justice Initiative, *cit.*, para. 11.

<sup>xxxi</sup> European Committee on Social Rights, *Centre on Housing Rights and Evictions v. Italy*, Complaint No. 58/2009, decision of 25 June 2010.

<sup>xxxii</sup> Cf. Article 81 par. 29 of Law-Decree 112/2008 (converted in Law 133/2008) for the *Carta Acquisti* and Article 65 of Law 448/98 for the *Cheque*.

<sup>xxxiii</sup> See *Tribunale del lavoro di Gorizia*, decisions of 1 October 2010 and 7 December 2010, *Tribunale del lavoro di Padova*, decision of 5 December 2011, available at: [http://www.asgi.it/home\\_asgi.php?n=1947&l=it](http://www.asgi.it/home_asgi.php?n=1947&l=it)

<sup>xxxiv</sup> This was recognized by the Italian government itself, *National Report Submitted in Accordance with paragraph 15 (A) of the annex to Human Rights Council resolution 5/1*, November 16, 2009 (Italian UPR submission), at 17. The Red Cross, who collaborated in the census, admitted that “in the beginning of the census in June 2008, in the camps of the city [Rome] about 4,000 individuals were counted and, with few exceptions, they were all Roma,” see *ERRC and Others, supra*, at 23-24.

<sup>xxxv</sup> See Open Society Institute and others, *quoted above*, at 26.

<sup>xxxvi</sup> See Open Society Institute and others, *quoted above*, at 12.

<sup>xxxvii</sup> On the applications filed in Rome cf. *TAR Lazio*, Ruling no. 194/2011.

<sup>xxxviii</sup> Decision by the Data Protection Authority (Garante della Privacy) No. 102 of 15 March 2011 <http://www.privacy.it/garanterico201103152.html>.

<sup>xxxix</sup> *Tribunale di Milano*, application no. 2008/59283, March 12, 2011.

<sup>xl</sup> *Tribunale minorile di Napoli*, application no. 136/09, September, 29, 2009. The Appellate Court held that the decision by the first instance juvenile court was “not legitimate, because the reference the cultural patterns of ethnic belonging is

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due to a stereotypical vision (badly concealed behind a generic reference to “common experience”) and marked by racial bias.” *Corte d’appello di Napoli*, application no. 17696/2010, May 7, 2010.

<sup>xii</sup> See *Reports submitted by State parties under article 9 of the Convention (Italy)*, March 23, 2011, at para. 155.

<sup>xiii</sup> General Assembly Resolution 48/134, Annex, December 20, 1993. This total lack of independence is underscored by the fact that UNAR has never adopted an official position regarding the Nomad Emergency.