

# **Written Comments of the European Roma Rights Center Concerning Italy**

## **For Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 54th Session, 8-9 March, 1999**

### Executive Summary

The European Roma Rights Center (“ERRC”), an international public interest law organisation, respectfully submits written comments concerning Italy for consideration by the Committee on the Elimination of Racial Discrimination (“the Committee”) at its 54th session on 8 and 9 March, 1999.

We are aware of the efforts undertaken by the Italian Government (“the Government”) to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (the “Convention”), as detailed in its report to the Committee.<sup>1</sup> To date, however, these measures are insufficient to ensure the effective implementation of the Convention, particularly with regard to Articles 2, 3, 4, and 5.

As to Article 2, legal prohibitions against racial discrimination remain of uncertain scope and provide for ineffective remedies. Moreover, there is little indication that officials at all levels of Government are aware of — let alone determined to act on — their obligation to ensure that anti-discrimination laws and regulations are effectively enforced. As a result, Roma continue to suffer widespread discrimination in virtually all spheres of public life.

As to Article 3, by developing a housing policy for Roma premised on the racist and incorrect characterisation of them as “nomads,” the Government has fostered the segregation of Roma into inhuman and degrading “camps” to which no other segment of the population is confined.

As to Article 4, in failing to acknowledge and condemn widespread anti-Roma policies, practices and attitudes, Government authorities have undertaken insufficient efforts to ensure effective implementation of legislation prohibiting dissemination of racism and incitement to racial discrimination.

As to Article 5, Roma are commonly the victims of racially-motivated police violence; remedies are non-existent or inadequate. In addition, Roma are discriminated against with respect to a broad range of rights to which non-Roma in Italy are entitled, most egregiously and systematically, the rights to equal treatment before law enforcement and judicial authorities, freedom of residence within the country, housing, education, and access to public accommodations and services.

In view of these deficiencies, the Government should establish an office staffed with qualified personnel with responsibility for publicising anti-discrimination norms, and for investigating and prosecuting violations of anti-discrimination law; abolish racial segregation of Roma in housing and eliminate its attendant effects in other fields; discipline and prosecute police and others for racially-motivated violence and other crimes against Roma; and at the highest levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.

### Expertise and Interest of the ERRC

The ERRC is an international public interest law organisation, which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in more than a dozen countries, including Italy, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. An ERRC monitor is presently stationed in Italy reporting regularly on human rights developments concerning Roma. ERRC publications about Italy and other countries and additional information about the organisation, are available on the Internet at <http://www.errc.org>.

The ERRC believes that the upcoming session of the Committee offers an opportunity to highlight some of the most significant respects in which the Government has failed to fulfill its commitments under the Convention. We submit that our extensive factual research concerning Italy warrants the attention of the Committee to our written comments.

## Discussion

### Article 2

To date, the Government has not complied with its obligations to “prohibit and bring to an end, by all appropriate means, including legislation [...] racial discrimination [...]” (Art. 2(1)(d)). On the one hand, legislation prohibiting racial discrimination per se appears to provide for inadequate remedies and has not been widely publicised. On the other, the Government has not acted to ensure that what legislation does exist is effectively implemented in practice.

The European Commission against Racism and Intolerance has recently concluded that, “In Italy there is no general legislation to counter racial or ethnic discrimination.”<sup>2</sup> Apart from 1993 amendments to the criminal code (which address the dissemination of racist speech and racially-motivated violence), Italian law affords “little ammunition against racial discrimination or other outward forms of intolerance.”<sup>3</sup> Immigration legislation adopted in July 1998 appears to provide limited protection against racial discrimination.<sup>4</sup> However, the scope of the protection afforded therein is unclear<sup>5</sup> and the remedies provided are inadequate.<sup>6</sup>

Although the Government ratified the Framework Convention on National Minorities in November, 1997, Italy still does not have a minorities’ law.<sup>7</sup> Moreover, it now appears that, if and when a law securing the rights of minorities is ultimately passed, it will not apply to Roma. Thus, draft legislation on the linguistic and cultural rights of minorities, currently pending in the Senate, was approved by the Chamber of Deputies in June 1998 only after Roma had been explicitly excluded from the proposed law’s application.<sup>8</sup>

Similarly, after the Government<sup>9</sup> and others<sup>10</sup> had praised draft immigration legislation for granting legal non-citizens the right to vote in local elections, this provision was deleted from the law before it was finally adopted.<sup>11</sup>

The ambiguity and resulting inadequacy of Italy’s legislative norms on racial discrimination are compounded by the failure to ensure their effective implementation.<sup>12</sup> Thus, notwithstanding the general constitutional provision on equality (Article 3), “there is no case-law on the subject of racism.”<sup>13</sup> Furthermore, there appears to be no case-law concerning those few legislative prohibitions against non-violent acts of discrimination which do exist.<sup>14</sup>

The Government has yet to provide information to counter the widespread impression that most anti-discrimination norms in Italy are unused and unknown. Government officials, representatives of non-governmental monitoring organisations and members of the bar with whom ERRC has spoken in recent weeks expressed near-universal uncertainty about the provisions of the laws, the scope of their applicability, and the frequency with which they are in practice applied to concrete cases of discrimination. In short, there is little indication that the Government has undertaken any substantial public education effort to ensure that these laws do not lie dormant.

As to the 1993 criminal law modifications, which apply to racially motivated violence and hate speech, at the March 1995 Committee session, when the Government’s eighth and ninth periodic reports were considered, the Italian delegation claimed that, “[a]s a direct effect of the new legislation [to combat racism and discrimination], the number of acts of intolerance, discrimination and racial violence had drastically decreased.” However, the Government was unable to provide any information concerning the frequency or effectiveness of judicial remedies for racially-motivated violence, stating simply that “pro-

ceedings under the new legislation had not yet been concluded, with the result that final judgements were not yet available, although many decisions had been taken by the judiciary under the 1975 legislation.”<sup>15</sup> Unfortunately, the Government report submitted in 1998 provides no further elaboration on this point.

In short, several months of intensive research by ERRC have failed to uncover evidence which might contradict the 17 July, 1998 finding of the United Nations Human Rights Committee Chairperson (Ms. Chanet) that, in Italy, “[...]little progress had been made in action to combat racism [...]”<sup>16</sup>

Finally, as to the Committee’s General Recommendation 17 on the establishment of national institutions to facilitate the implementation of the Convention, ERRC notes that there is no such body in Italy. To date, the only governmental entity that has been established to address issues relating to Roma and other minorities is the Office for National Minorities and Border Problems within the Ministry of the Interior. However, the functions of this office, established in 1964, are decidedly not public education, legislative monitoring, or any of the other activities specified in Recommendation No. 17.<sup>17</sup> The need for a governmental body expressly responsible for carrying out the above functions is clear. As ECRI has recommended, “in order to contain the phenomenon of racism in Italy, consideration should be given to the possibility of setting up a specialised body or a special branch of a general human rights commission, with wide-ranging power and responsibility in this area.”<sup>18</sup>

### Article 3

Alone among all population groups, Roma in Italy — be they immigrant Roma from the territory of former Yugoslavia and Romania, or “Italian” Roma and Sinti — are almost invariably segregated into inhuman and degrading camps located far from most city centres, thoroughfares and public services.<sup>19</sup> Government housing policy deliberately and systematically segregates Roma from the rest of the population on the false and racist assumption that Roma are “nomads” by nature, who wish to live in camps rather than houses or apartments. The entirely predictable result of such intentional racial segregation, and of the racist assumptions which underlie it, is the marginalisation of Roma from mainstream political, economic and social life, and the denial of equality in public spheres from housing to criminal justice, education and employment.

Regional laws adopted in ten of the twenty regions in Italy in the late 1980s and early 1990s aimed openly at what was commonly referred to as “the protection of nomadic cultures” through the construction of camp sites for Roma.<sup>20</sup> Most camps are surrounded by a wall or fence. Security guards control entry. Although many Government-authorized camps are equipped with running water, electricity and chemical toilets, a large number lack even these basic sanitary requisites. In the “Casilino 700” camp in Rome, for example, nearly two thousand Roma share nine chemical toilets and live without electricity or running water.<sup>21</sup>

Not surprisingly, camp addresses carry a negative connotation with employers, police and government officials. Anecdotal evidence suggests that the racial prejudice Roma job applicants face is worsened by employers’ common reluctance to hire workers carrying identification with a camp address.

### Article 4

Despite the government’s obligations under Article 4(c) not to “permit public authorities or public institutions, national or local, to promote or incite racial discrimination,” racist speech against Roma and non-Italians by Italian public officials is common. Moreover, many Government officials’ unfortunate tendency to downplay the significance and prevalence of racism against Roma and others in Italy<sup>22</sup> is inconsistent with the spirit of Article 4.<sup>23</sup>

In September 1995, in connection with a public debate concerning the housing situation of Roma in Florence, Riccardo Zucconi, local spokesman of the Green Party, was reported to have declared that “Roma are an infection” and that “to create new living quarters for Roma means spreading the infection to the whole Florence area.”<sup>24</sup>

In early January 1997, the youth section of the Northern League reportedly organised a demonstration in Milan against illegal immigrants and “Gypsies,” whom they accused of “laying siege” to the city.<sup>25</sup>

As recently as 9 February, 1999, the Italian television show “Le Iene” filmed Chamber of Deputies MP Borghezio of the Northern League carry out what he proclaimed was an act of “ethnic cleansing.” As the cameras rolled, TV spectators saw Deputy Borghezio, accompanied by two fur-coated assistants, enter the compartment of a Milan-Turin train in which two African women were seated, ask the women what portions of the compartment they had touched, then spray disinfectant on the “affected” areas.<sup>26</sup> A week later, on the same television show, Senator and Northern League leader Umberto Bossi bluntly refused to apologise in the name of his party for the “spraying” incident.<sup>27</sup>

Notwithstanding the Government’s recent representation that “[a]nti-racist legislation applied to everyone in Italy” and that, “[w]hen a member of Parliament or the Government made a statement which amounted to incitement to racial discrimination or any other offence covered by Anti-Racism Law, criminal action would be taken,”<sup>28</sup> ERRC is unaware of any public official who has been publicly criticised — let alone brought to justice — for any of the above incidents, or for any other act of racial incitement against Roma or other minorities. Perhaps not coincidentally, according to the Government’s own count, the number of “incidents of racial intolerance” increased from 51 in 1996 to 85 in 1997.<sup>29</sup>

## Article 5

### Article 5(a) – The right to equal treatment before the tribunals and all other organs administering justice

Information gathered by ERRC indicates that Roma suffer widespread discrimination in the Italian justice system. On the one hand, complaints by Romani victims of human rights abuse are inadequately investigated by law enforcement and judicial authorities. To take one example, on 28 February 1998, 22-year-old K.L., a Romani immigrant from Romania, sought police assistance after a private security guard in Milan slashed him with a knife on the hand and face. The police ignored the man’s complaint, then held him overnight while denying him medical care, food and water.<sup>30</sup> The Florence-based non-governmental organisation Association for the Protection of the Rights of Minorities reports that, “[w]hen Roma and Sinti are the victims of police abuse, the criminal justice system is slow and ineffective to a degree unusual even by local standards.”<sup>31</sup>

In turn, Romani defendants are subjected to pre-trial detention more often than non-Roma, and receive disproportionately severe sentences. One police officer in Rome flatly told ERRC, “Roma [in Italy] are held in detention for longer periods of time and more frequently than non-Roma for the same offence.”<sup>32</sup> Since most of the Roma in Italy — and only Roma — live in camps, and camp addresses are not considered official,<sup>33</sup> Romani defendants are placed in pre-trial detention on flight-prevention grounds even for minor infractions for which non-Roma are routinely released.<sup>34</sup> Employing similar reasoning, judges often sentence Roma to prison terms for crimes which might, in other cases, merit non-custodial punishment. In one recent case, when Razema Hamidovic, 42-year-old Romani woman who spent the first portion of her nine-year sentence in prison, asked to serve the remainder in a non-custodial capacity, the reviewing magistrate rejected the request, reportedly stating, “We cannot let her out! She is a nomad and will never report to us! If we let her go, we will never see her again!”<sup>35</sup>

Finally, the Government itself acknowledges that, notwithstanding the principle of equal treatment of prisoners, “in practice, there is no real guarantee that foreign citizens in prison will be treated like Italians.”<sup>36</sup> In addition to ill-treatment,<sup>37</sup> Romani inmates suffer disproportionately from prison regulations which do not recognise traditional and common law marriages, but reserve to legal spouses only the right to visit inmates.<sup>38</sup>

Article 5(b) - The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

Roma throughout Italy are regularly subjected to unremedied violence and other forms of abuse by law enforcement officials. International organisations, both governmental and non-governmental, have on several occasions noted the frequency of reports of police abuse in Italy, particularly against Roma and non-Italians, and voiced concern that police misconduct is often racially motivated.<sup>39</sup>

To date, the authorities' efforts to combat this alarming phenomenon have proven inadequate.<sup>40</sup> Law enforcement officials with whom ERRC spoke knew of no prosecutions of police officers for abuse of Roma, although internal disciplinary measures have apparently been taken against a number of officers for unlawful confiscation from, and beating of, Roma.<sup>41</sup>

Police abuse of Roma in Italy takes various forms, ranging from beatings during arrest or in custody to shootings to the unlawful confiscation of personal belongings under the threat of physical abuse. The following cases are illustrative and do not purport to constitute a comprehensive survey:

1. The shooting of 8-year-old Natali Marolli

On 22 May, 1998, at around 4:00 p.m., P.N., a police officer from the carabinieri (a police force reporting to the Ministry of Defence), shot and permanently injured Natali Marolli, an 8-year-old Romani girl in Montaione, approximately 40 kilometres south-west of Florence. The bullet entered the car in which Natalie was sitting along with three adults through the back-window, went through Natali's left eye, exited through the back of her head, and then hit and lightly wounded the front passenger, a Romani male, in the head. Another bullet lightly wounded Natali's mother, Biserka Nikolic, and then Natali's cheek.

The police, who claim to have fired four shots in all, were apparently waiting in ambush after having received a report that a "suspicious-looking car with Gypsies was in the neighbourhood." One of the two police officers involved in the incident reportedly recognised one of the persons in the car as "one Mustafa from one of those Gypsy camps."<sup>42</sup>

ERRC is not aware of any disciplinary measures taken against either officer. An initial investigation into the shooting acquitted Officer P.N. of attempted murder of the child. Thereafter, on 16 November, 1998, the three adults involved filed a complaint, requesting prosecution of the police for their attempted murder. The case is presently pending before the investigating judge of Florence with a hearing scheduled for 21 April, 1999.

2. Ill-treatment upon arrest or in detention

a) On the evening of 10 December, 1998, two police officers in Florence allegedly beat three Romani men — 21-year-old E.P., 21-year-old B.R. and 23-year-old G.R. — who were arrested on charges of theft, then detained pending trial. An attorney's request for a physician was denied for four days. When finally permitted, on 15 December, 1998, a medical examination documented numerous bruises on the three men,<sup>43</sup> all of whom claimed they had been beaten both during arrest and at the police station. The ERRC is unaware of any investigation into the alleged mistreatment.<sup>44</sup>

b) F.D., a 17-year-old Romani youth, was arrested by police in Pisa in late November, 1998. When the police brought him back to his camp several hours later, a number of witnesses observed that his eyes were swollen and that he bore traces of severe beating. The ERRC is unaware of any investigation into the alleged police misconduct.<sup>45</sup>

c) On 7 November, 1998 in Brescia, several police officers reportedly arrested and severely ill-treated three Romani men — 22-year-old H.M., 20-year-old R.R., and 17-year-old F.S. During interrogation at the police station, one police officer, whose identity is known to the ERRC, allegedly beat the three boys with fists, kicked them and racially insulted them over the course of several hours, while another five

officers were watching. Seventeen-year-old F.S. reported having had his head banged against the wall, and told the ERRC that one officer threatened to bring in oil and set his hair on fire. All three victims were charged with attempted robbery and detained until mid-January, 1999. All three reported the beatings to the prison doctors who examined them upon their arrival in the prison, as well as to their lawyers, who discouraged the victims from filing a complaint against the police.<sup>46</sup>

d) S.J., a Romani man in his 40s, alleges having been severely beaten by police in detention during the night of 4 May, 1998 in Palermo. Arrested after a car in which he was travelling failed to stop at a red light, S.J. was forced to walk to the nearest police station with a truncheon placed under his chin. S.J. reported having been forced to sit handcuffed on a chair throughout the night, during which police officers on several occasions struck him with fists and truncheons, and kicked him in the stomach, legs and back. S.J. was detained for four months before being released.<sup>47</sup> The ERRC is unaware of any investigation into the alleged police misconduct.

e) On 31 December, 1997, three Roma — 18-year-old Ms. L.J., her 22-year-old cousin Ms. E.N., and the latter's husband, also 22 — were arrested by police in Naples for attempted burglary. The three were made to stand against a wall with their legs wide apart and searched. During the search, the (male) police officer allegedly looked under E.N.'s skirt, hit E.Z.'s husband with the butt of a gun, and pulled L.J. by the hair. The three Roma were then taken to the police station, where they were kept handcuffed in separate rooms and subjected to several turns of severe beating throughout the night. At one point, L.J. was reportedly handcuffed to a radiator while police officers threw firecrackers at her. Several hours later, after all three signed confessions to attempted burglary, they were released.<sup>48</sup> No known investigation of the police behavior has been initiated.

### 3. Police raids

Roma in Italy are frequently subjected to unlawful police raids — armed assaults in the early morning hours during which homes are searched, contents ransacked, inhabitants harassed or subjected to excessive force, and young men rounded up for arrest or questioning — often without warrants or any particularised finding of probable cause or reasonable suspicion of criminal activity. Not infrequently, the purpose, and certainly the effect, of such actions, is to intimidate and harass members of a vulnerable population group, rather than to apprehend and prosecute criminal offenders.

Police raids have recently been reported in the via Borgosatolo camp in Brescia, the viale Etruria camp in Milan, the Masini camp and the via San Donino camp on the outskirts of Florence, the Muratella camp on the outskirts of Rome, the Favorita camp in Palermo, and in an Italian Sinti camp in Reggio Emilia near Bologna.<sup>49</sup> In several cases, including raids of the Muratella camp in Rome and of the Favorita camp in Palermo in January 1999, police officers have fired their weapons. During a raid in the Muratella camp in early 1996, a police officer reportedly shot and wounded I.S., a 15-year-old boy in the leg.<sup>50</sup>

In none of the raids listed above were the inhabitants presented with duly issued search or arrest warrants; nor was anyone charged with any crime — not the Roma who were searched, arrested, or questioned, nor the police who engaged in unlawful activity.<sup>51</sup>

### 4. Other

Robbery by the police — the unlawful confiscation without cause of personal belongings, including jewelry and/or money, accompanied by the threat of physical violence — is yet another common form of police abuse of Roma in Italy. The police routinely refuse to provide written documentation of confiscated items, which are almost never returned to their owners. Reports concerning unlawful confiscation in 1998 have been received from Roma in the Secondigliano camp near Naples; and from Roma in camps located in Crotona, Palermo, Florence, Venice and the Veneto region.<sup>52</sup> ERRC is unaware of any police officers who have been disciplined or prosecuted for these crimes.

Other forms of police misconduct targeting Roma in Italy include strip searches of women by male police officers,<sup>53</sup> arbitrary destruction of identification documents during identity checks,<sup>54</sup> and the cutting off of hair of Romani girls found begging.<sup>55</sup> Once again, ERRC knows of no case in which police officers have been disciplined or prosecuted for these offences.

#### Article 5(e) - Economic, social and cultural rights

Roma in Italy suffer marginalisation and *de facto* discrimination in the enjoyment of economic, social and cultural rights. The failure to date to gather reliable data concerning the number of Roma in the field of housing, education or employment — or for that matter, to maintain any statistics based on race, ethnicity and/or mother tongue<sup>56</sup> — severely impedes governmental efforts to design policies aimed at remedying the situation.

#### Article 5(e)(iii) - The right to housing

As noted above (see Article 3), most Roma in Italy — both citizens and non-citizens — are singled out on the grounds of race and denied access to public housing to which all others are entitled. No other population group is officially housed in camps. Insofar as Roma are treated differently from, and worse than, all others solely because of their race, they are subjected to improper racial discrimination in access to housing.<sup>57</sup>

#### Article 5(e)(v) – The right to education and training

The Government's racial segregation of Roma in remote camps severely hinders the access of Romani children to adequate education. Many Romani children are denied the right to attend schools altogether, as their camps are located far from schools or school transportation services. In a number of cases, the Government has acknowledged this problem, but has provided inadequate remedy in the form of visits by social workers who offer classes in the camps exclusively to Romani children. Children attending these ad hoc classes are not taught by professionally certified teachers and do not receive official grades; they thus may not qualify for secondary school. They are denied the right to education solely because, as Roma, they are subjected to racially segregated housing.

Notwithstanding the existence of legal provisions recognising the equal right to education,<sup>58</sup> Romani children who attend normal schools face a series of racially-motivated obstacles, from prejudice on the part of non-Romani parents who do not want their children attending school with “Gypsies,” to bullying by non-Roma classmates, to stereotyping by teachers and school administrators who perpetuate myths of “genetically” lower intelligence levels among Romani children.<sup>59</sup> Children from six Romani families who moved to a new school in Florence in September 1998 confronted angry protests from non-Roma parents who threatened to withdraw their children rather than have them share the same benches with Roma. Rather than affirming the rights of Roma to equal education, the school administration reportedly dispersed the Romani children among several different schools to assuage non-Roma prejudice.<sup>60</sup>

#### Article 5(f) – The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

On occasion, Roma and other non-Italians are denied admission to, or service on an equal basis in, restaurants, bars and similar establishments in Italy. On 29 March, 1998, an article in the daily “Il manifesto” reported that the owner of a pizza restaurant in Ventimiglia had attempted to charge a Romani customer extra for a pizza solely because of his ethnic origin.<sup>61</sup> On 26 December, 1997, “Il manifesto” reported that a bar in San Salvario, a district of Turin, does not serve foreigners. According to the article, no group is actually banned, as such a practice would be illegal. Rather, the bar staff is under orders not to serve foreigners.<sup>62</sup>

V.M., 59-year-old Romani woman, reported having been denied a cup of coffee in a coffee shop in Mestre in northern Italy in 1996, and told, “Gypsies are not allowed entry here.”<sup>63</sup> Roma in Florence

told the ERRC that they patronise only the few bars in the city where “no one bothers us about who we are.”<sup>64</sup> ERRC is aware of one Florence café which recently posted a sign at the entrance stating, “No Gypsies.”<sup>65</sup>

Shop-owners, too, have discriminated against Roma. Twenty-year-old M.D., an Italian-born Sinti, reported that on several occasions, when she or other Roma or Sinti entered a local food-store, the personnel locked the door and checked “that nothing was missing,” before letting them out.<sup>66</sup>

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<sup>1</sup> United Nations Committee on the Elimination of Racial Discrimination, “Reports submitted by States Parties under Article 9 of the Convention, Eleventh periodic reports of States parties due in 1997, Addendum, Italy”, CERD/C/317/Add. 1, 20 July, 1998 (hereafter the “Government Report”).

<sup>2</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI), “Legal Measures to combat racism and intolerance in the member States of the Council of Europe” (1998) (hereafter “Legal Measures”), p. 261.

<sup>3</sup> *Ibid.*, p. 263.

<sup>4</sup> Legislative Decree No. 286 (“Testo unico delle disposizioni concenenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”), formerly Law No. 40 of 6 March, 1998. See Arts. 43 and 44.

<sup>5</sup> Among other ambiguities, the inclusion of racial discrimination provisions in a law primarily addressing “immigration” and “foreigners” raises questions as to whether such provisions apply to citizens as well, notwithstanding the apparent assurance of Art. 43, para. 3 that they do.

<sup>6</sup> The law does not authorise the imposition of imprisonment, fines, or other criminal penalties in the event of a finding of unlawful discrimination. We note more generally that the absence of effective remedies for discrimination in Italian law and practice implicates Article 6 as well, which the Government Report fails to address.

<sup>7</sup> ERRC interview, Office for National Minorities and Border Problems, Ministry of the Interior, Rome, January 1999. In its Concluding Observations concerning Italy, the United Nations Human Rights Committee “noted that delays continue to occur with respect to passing legislation concerning [...] the introduction of measures giving effect to further improvement of the rights of persons belonging to ethnic, religious and linguistic minorities [...]” (United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: Italy”, CCPR/C/79/Add.94, 18 August, 1998, para. 19).

<sup>8</sup> While Article 1 of “Progetto di legge” No. 169, the initial proposal, submitted by Deputies Corleone, Boato and Ruffino, made explicit reference to the linguistic and cultural rights of the Romani minority, the version voted by the Chamber on 17 June, 1998 and transmitted to the Senate on 18 June, 1998 (“Disegno di Legge” No. 3366) deleted any reference to the Roma. There is currently no law in Italy which expressly protects the linguistic and cultural rights of the Roma minority.

<sup>9</sup> See Government Report, para. 26.

<sup>10</sup> See Council of Europe, ECRI - European Commission against Racism and Intolerance, “ECRI’s country-by-country approach: volume III” (15 June, 1998) (hereafter “ECRI’s country-by-country approach”), p. 33 (noting as a positive measure, before it was deleted from the bill, legislative provision granting non-citizens right to vote in local elections).

<sup>11</sup> Legislative Decree No. 286 (“Testo unico delle disposizioni concenenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”), formerly Law No. 40 of 6 March, 1998. Some who successfully sought to delete from the bill voting rights for legal non-citizens suggested that such a provision would contravene the Italian Constitution, which grants the right to vote to Italian citizens only. See Constitution, Article 48(1) (“All private citizens, male or female, who are of age, are entitled to vote”). However, this did not prevent Parliament from including in the final version of the adopted legislation a grant of voting rights to non-Italian EU citizens.

<sup>12</sup> See, e.g., General Recommendation 20 on Article 5, para. 4 (clarifying that States should report on “the non-discriminatory implementation of each of the rights and freedoms referred to in Article 5”); General Recommendation 15 on Article 4, para. 2 (to satisfy their obligations under Article 4, “States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced”). Indeed, the European Commission against Racism and Intolerance (ECRI) noted in its most recent report on Italy, that, “[d]espite [a] relatively well-developed legal frame-



work, Italy seems to face some problems with implementation of legislation in force, and ECRI feels that it is precisely this aspect of implementation which should be examined.” (ECRI, “ECRI’s country-by-country approach”, p. 34).

<sup>13</sup> ECRI, “Legal Measures,” p. 263.

<sup>14</sup> See, e.g., ECRI, “ECRI’s country-by-country approach,” p. 34 (“there appears to be no case-law” concerning the anti-discrimination provisions of the labour law, Section 15(2) of Act No. 300 of 1970 (“Workers’ Statute”).

<sup>15</sup> United Nations Committee on the Elimination of Racial Discrimination, Summary record of the 1075<sup>th</sup> meeting: Italy”, CERD/C/SR.1075, 6 March, 1995, para. 20.

<sup>16</sup> United Nations Human Rights Committee, “Summary record of the 1680<sup>th</sup> meeting: Italy”, CCPR/C/SR.1680, 24 September, 1998, para. 70. In its Concluding Observations concerning Italy, the Human Rights Committee expressed concern “at the increase of incidents of racial intolerance,” and recommended that “all measures by way, for example, of legal constraint and education be continued to eradicate this phenomenon.” (United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: Italy”, CCPR/C/79/Add.94, 18 August, 1998, para. 18).

<sup>17</sup> ERRC interview, Office for National Minorities and Border Problems, Ministry of the Interior, Rome, January 1999.

<sup>18</sup> Council of Europe, ECRI, “ECRI’s country-by-country approach,” p. 34.

<sup>19</sup> See General recommendation 19 (clarifying that Article 3 of the Convention “prohibits all forms of racial segregation in all countries.”).

<sup>20</sup> See, e.g. Regional Law No. 299/89 of Lombardy (entitled, “Regional Action for the Protection of Populations with Nomadic or Semi-Nomadic Traditions”). A similar law from 1994 in the Marche region was termed, “Interventions in Favour of Migrants, Immigrants, Refugees, Stateless Persons, Nomads and their Families.” As one observer has noted, “juridical and anthropological categories are thus blended arbitrarily.” (P. Colacicchi, “Down by Law: Police Abuse of Roma in Italy,” *Roma Rights*, Winter 1998, p. 26).

<sup>21</sup> ERRC interviews, “Casilino 700” camp, Rome, September 1997 and January 1999. Conditions are even worse in the unofficial, or “illegal” camps, which are not provided with any services whatsoever by the municipal authorities. Apart from being forced to live without water, toilets or electricity, Roma living in such camps are constantly threatened with expulsion and harassment by the police, who raid them systematically to force them to leave.

<sup>22</sup> In its last appearance before the Committee, the Italian delegation exhibited a disturbing reluctance to acknowledge the depth of the problem. Thus, delegation representatives stated: “Italian society did not breed sentiments of a racist nature. [...] Incidents that could be classified as incidents of “racism” normally fell into different categories. [...] The fact of attacking or beating non-Europeans usually had little to do with racial discrimination. In most cases, the behaviour originated in a compelling urge to give reign to the most violent instincts.” (United Nations Committee on the Elimination of Racial Discrimination, Summary record of the 1075<sup>th</sup> meeting: Italy”, CERD/C/SR.1075, 6 March, 1995, para. 18).

<sup>23</sup> The argument herein is premised on the text of Article 4(c). We note that the Government reservation concerns only Articles 4(a) and (b).

<sup>24</sup> “Il manifesto,” 23 September, 1995.

<sup>25</sup> The Institute of Race Relations, *European Race Audit*, Bulletin No. 23, May 1997, pp. 19-20, citing the Italian daily “Il manifesto,” 9 January, 1997.

<sup>26</sup> “La Iene,” 9 February, 1999.

<sup>27</sup> “La Iene,” 16 February, 1999.

<sup>28</sup> United Nations Human Rights Committee, “Summary record of the 1680<sup>th</sup> meeting: Italy”, CCPR/C/SR.1680, 24 September, 1998, para. 4.

<sup>29</sup> United Nations Human Rights Committee, “Summary Record of the 1679<sup>th</sup> meeting: Italy”, CCPR/C/SR.1679, 28 July, 1998, para. 27. During the first two months of 1998, the delegation said that eight such incidents had been reported.

<sup>30</sup> ERRC interview, Milan, January 1999. In another incident, the Italian daily “La Repubblica” reported on 14 September, 1997 that a group of non-Roma set fire to a car, then pushed it burning into a parked wagon carrying a Romani family of four, including a seven-month-old baby and a three-year-old boy. The wagon had been parked on the edge of a road near the river Olona, on the outskirts of Milan. (The Institute of Race Relations, *European Race Audit*, Bulletin No. 26, February 1998, p. 21). To our knowledge, no law enforcement authority has commenced an investigation or sought to identify the perpetrators.

<sup>31</sup> *Roma Rights*, Winter 1998, p. 27. For instance, a police officer found guilty of shooting to death an 11-year-old Romani boy and seriously wounding his 13-year-old cousin near Padua on 23 September 1993, received only a three-month suspended sentence. He is reportedly still on active duty. (For detailed accounts of the case, see e.g. Amnesty International, “Italy: Alleged torture and ill-treatment by law enforcement and prison officers,” April 1995, Appendix pp. 4-5, and Amnesty International, “Amnesty International 1996 Annual Report on Italy (the Italian Republic),” 1996, p.189).

<sup>32</sup> ERRC interview, Rome, January 1999. Persons familiar with the Italian criminal justice process estimate that Roma

and non-EU citizens run twice as high a risk to be sentenced to imprisonment, and spend on average 30 per cent more time in prison, than non-Romani Italians and EU-citizens convicted for the same offence. (ERRC interviews, Florence, January 1999).

<sup>33</sup> Persons living in camps are commonly provided with identity documents stating simply, “without address,” or providing only a collective address to the entire camp.

<sup>34</sup> As recently as 18 February, 1999, in denying a request for pre-trial release on the part of three Romani men detained on charges of burglary, Investigating Judge Antonio Crivelli in Florence highlighted what he referred to as “the risk of flight due to the fact that they are nomads without stable housing [...]” (Document No. 4359/98 RNR; No. 102980/98 R.G. G.I.P.).

<sup>35</sup> ERRC interview, Florence, January 1999.

<sup>36</sup> Government Report, para. 30.

<sup>37</sup> See United Nations Human Rights Committee, “Summary records of the 1679<sup>th</sup> meeting: Italy,” CCPR/C/SR.1679, 28 July, 1998, para. 48 (noting “frequent cases of ill-treatment” [...] linked with the problem of racial discrimination.”).

<sup>38</sup> According to Italian law, only certain legally recognised relatives are granted the right to visit inmates without a special permission issued by the prison director upon presentation of a certificate concerning relationship to inmate – which, in turn, is to be obtained by the police (Circular of the Department of Penitentiary Administration (D.A.P.), 29 December, 1986 No. 3191/5641, para. 1). Reports indicate that the police often refuse to issue such certificates to Roma living in camps, apparently claiming that assessment of the type of relationship in such situations is impossible.

<sup>39</sup> See United Nations Special Rapporteur on Torture, “Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 B, E/CN.4/1997/7, 10 January, 1997 (noting that “racial prejudice seemed to be a factor” in the use of physical violence by the police, and that “physical ill-treatment was allegedly accompanied in many cases by insults, particularly racial insults when the persons concerned were immigrants or Gypsies”) (emphasis added).

The United States Department of State 1999 country report on Italy found that “[e]xamples of [police] mistreatment include insults, particularly those aimed at aliens or Roma, kicking, punching, beatings with batons, or deprivation of food”, and that a “high proportion of these cases involve non-European Union immigrants, (mostly Africans), Roma, and persons held in connection with drug-related offenses.” (United States Department of State, “Italy Country Report on Human Rights Practices for 1998,” Bureau of Democracy, Human Rights, and Labor, February 26, 1999 ([http://www.state.gov/www/global/human\\_rights/1998\\_hrp\\_report/](http://www.state.gov/www/global/human_rights/1998_hrp_report/)), last visited 1 March, 1999) (emphasis added).

The Concluding Observations concerning Italy of the United Nations Committee against Torture noted “a tendency to discriminatory treatment by sectors of the police force and prison warders with regard to foreigners,” and expressed “concern” regarding “the persistence of cases of ill treatment in prisons by police officers” and “a dangerous trend towards some racism, since the victims are either from foreign countries or belong to minorities.” (United Nations Committee against Torture, “Concluding Observations of the Committee against Torture: Italy”, A/50/44, paras.146-158, 26 July, 1995, paras. 153-154).

Amnesty International too has observed that “[a] high proportion of allegations [of police ill-treatment] concern immigrants from outside Western Europe – most of them from Africa – and an increasing number of Roma. [...] The most common forms of ill-treatment alleged are repeated slaps, kicks and punches, and beatings with truncheons, frequently accompanied by general verbal abuse and, in the case of immigrants and Roma, racial abuse. [...] Officers attached to one city police force are said to have chained some immigrants to hot water radiators and transported others outside the city, removed their shoes and forced them to walk back barefoot.” (Amnesty International, “AI Concerns in Europe: January-June 1995,” September 1995, p. 30) (emphasis added).

<sup>40</sup> Among the “key areas identified by ECRI [the European Commission on Racism and Intolerance] as meriting particular attention” in the case of Italy is “the need for a prompt and adequate response on the part of the judicial authorities in cases of violent manifestations of racism and xenophobia, especially by law enforcement officers.” ECRI additionally stated about Italy, that “there have been reports of ill-treatment by police, prison guards or other prisoners towards immigrants and non-EU citizen detainees”, and that “[s]ome NGOs have reported that the authorities react to such reports slowly and that penalties imposed are minimal and often suspended.” (ECRI, “ECRI’s country-by-country approach,” pp. 31, 34).

In its Concluding Observations concerning Italy, issued in August 1998, the United Nations Human Rights Committee expressed concern “at the inadequacy of sanctions against police and prison officers who abuse their

powers”, and recommended that “due vigilance be maintained over the outcome of complaints made against members of the carabinieri and against prison officers.” (United Nations Human Rights Committee, “Concluding Observations of the Human Rights Committee: Italy”, CCPR/C/79/Add.94, 18 August, 1998, para. 13).

The United Nations Committee against Torture also voiced concern about “a series of serious acts of torture, and in some cases deaths, of detainees” in Italy, and was of the opinion that the “penalties on the members of the forces of law and order are not commensurate with the seriousness of these acts.” (United Nations Committee against Torture, “Concluding observations of the Committee against Torture: Italy”, A/50/44, paras.146-158, 26 July, 1995, para. 155).

<sup>41</sup> ERRC interviews, Rome and Florence, January 1999.

<sup>42</sup> Communication issued by the Montaione Police following the incident.

<sup>43</sup> Medical certificates signed by Dr. Andrea Falchi, dated 15 December, 1998.

<sup>44</sup> ERRC interview, Florence, January, 1999.

<sup>45</sup> ERRC interview, Pisa, January, 1999.

<sup>46</sup> ERRC interview, Brescia, January, 1999.

<sup>47</sup> ERRC interview, Palermo, January, 1999.

<sup>48</sup> ERRC interview, Palermo, January 1999.

<sup>49</sup> ERRC interviews, Milan, Brescia, Florence, Rome, and Palermo, January 1999. On police raids in Roma camps in Italy, see also *Roma Rights*, Autumn 1997, p. 52-53 and Winter 1998, p. 26.

<sup>50</sup> ERRC interview, Rome, January 1999.

<sup>51</sup> Upon returning from work to learn that, during a raid in Florence’s Masini camp in the fall of 1998, a police officer had threatened his family for “hiding” him and pointed a gun at his daughter, 31-year-old N.S. went to the police to ask why they were looking for him. The police replied that “it had been a mistake” and told him to go home. ERRC interview, Florence, January 1999.

<sup>52</sup> ERRC interviews in Florence, September 1997 and Naples, Crotone, Palermo and Venice, January 1999.

<sup>53</sup> ERRC interviews, Rome, January 1999. Strip searches of Romani women by police in Rome are apparently common in the Colosseum area, at the Piazza di Spagna and at the Termini railway station.

<sup>54</sup> ERRC interviews in Florence and Naples, January 1999.

<sup>55</sup> See Amnesty International, “Italy: Alleged torture and ill-treatment by law enforcement and prison officers,” April 1995, Appendix p. 12).

<sup>56</sup> Information received from the National Institute for Statistics (ISTAT), Florence, January 1999. In its report on Italy, ECRI was of the opinion that “[e]fforts should be made to collect more comparable and reliable statistics, using a standard national form of categorisation of ethnic origin as the basis of all relevant studies [...]” (ECRI, “ECRI’s country-by-country approach,” p. 35).

<sup>57</sup> According to the European Commission against Racism and Intolerance (ECRI), “[...] discrimination often occurs as regards housing for non-EU citizens. In many towns, it has been reported that there is no urban policy and that discrimination exists in the allocation of public housing. [...] In particular, the Roma/Gypsy community faces severe problems in the field of accommodation.” (ECRI, “ECRI’s country-by-country approach,” p. 36 (emphasis added)).

<sup>58</sup> Memorandum No. 207 of 16 July, 1986 of the Ministry of Public Education stipulates, “[a]ll those who reside in Italian territory have full access to the various types and levels of Italian schools, even if they are not Italian nationals; any hostility towards them, or reluctance constitutes a manifest breach of the civil and constitutional principles of the Italian state.” (ECRI, “Legal Measures,” p. 276). Several subsequent circulars by the Ministry reaffirm this principle. Since none of these provisions bear any consequences in the event of breach, their effectiveness in practice remains questionable.

<sup>59</sup> In its Concluding observations concerning Italy, the United Nations Committee on the Rights of the Child expressed concern “that sufficient measures had not been taken to assess and provide for the needs of children from vulnerable and disadvantaged groups, such as [...] children of foreign and Roma origin,” and that such children “seem more likely to be stigmatized in public perception, to drop out of school, to be employed in clandestine work or even illegal activities, including being instrumentalized in organized criminal activities.” Among its suggestions and recommendations, the Committee stated that “[f]urther measures should [...] be taken to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children such as [...] Roma children and foreign children. The Government should consider adopting a more active stand and coherent policy with respect to the treatment of these children and to create an environment favourable to their fullest integration into Italian society.” (United Nations Committee on the Rights of the Child, “Concluding observations of the Committee on the Rights of the Child: Italy”, CRC/C/15/Add.41, 27 November, 1995, paras. 11 and 17).

<sup>60</sup> ERRC interview with a representative of the Florence municipality, January 1999.

<sup>61</sup> The Institute of Race Relations, *European Race Audit*, Bulletin No. 28, October 1998, p. 25.

<sup>62</sup> The Institute of Race Relations, *European Race Audit*, Bulletin No. 26, February 1998, p. 22.

<sup>63</sup> ERRC interview, Mestre, January 1999.

<sup>64</sup> ERRC interview, Florence, January 1999.

<sup>65</sup> ERRC interview, Florence, January 1999.

<sup>66</sup> ERRC interview, Mestre, January 1999.