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大会 2006 年 3 月 15 日题为“人权理事会”的
第 60/251 号决议的执行情况

当代形式种族主义、种族歧视、仇外心理和相关的
不容忍现象特别报告员杜杜·迪耶内的报告

增 编

对意大利的访问 * **

* 本报告的内容提要以所有正式语文分发。报告附于内容提要之后，仅以原文分发。

** 本文件迟交，是为了列入最新资料。

内 容 提 要

应意大利政府的邀请，并为履行使命，当代形式种族主义、种族歧视、仇外心理和相关的不容忍现象特别报告员于 2006 年 10 月 9 日至 13 日访问了意大利。访问的目的是评估意大利的当代形式种族主义、种族歧视、仇外心理和相关不容忍现象，着重于可能影响外国人，包括移民工人、难民、寻求庇护者，以及犹太人、穆斯林人、辛提人和罗姆人的歧视因素。特别报告员希望分析最近当选政府在所处的社会中采取或计划采取的反对种族主义、种族歧视、仇外心理和不容忍现象的政策和措施，因为在该国社会中仍可以看到前任政府受某些政党的仇外意识和政治论点深刻影响而采取的政策和方案的痕迹和后果。

访问结束后，特别报告员向意大利政府提出了初步意见。他的中心看法是，虽然意大利社会不存在深刻的种族主义现象，但也面对令人关切的仇外心理趋势和不断发展的种族主义表现，主要影响到辛提人和罗姆人，非裔和东欧移民及寻求庇护者，以及穆斯林人。他认为，这些群体以不同方式遭受体制和社会经济边缘化以及文化和宗教歧视。特别报告员感到震惊的是，有报告称在农业就业的移民工人在奴役般的劳动条件劳动，还有移民妇女的境况。她们作为家庭工人和护理员受到虐待，从事卖淫者众多。特别报告员关切地注意到移民立法中的安全条款可能导致对移民定罪，而且与穆斯林民族缺乏双边协定。

关于当局通过的政策和措施，特别报告员欢迎新政府表示将对移民和多文化采取不同的做法，也欢迎政府坚定承诺反对种族主义和仇外心理。在这方面，特别报告员感兴趣地注意到已提交议会的新《公民法》草案，宣布在移民领域进行改革，还提出法案加强保护各种法律身份移民在工作中不受虐待。

最后，特别报告员提出了一些建议，包括以下方面：

- 需要表明反对种族歧视和仇外心理的政治意愿和决心；
- 通过法律战略，在短期内执行现行民事和刑事反歧视法，通过《公民法》，不将入籍与收入水平相联系，与所有有关行为者包括公民社会协商，制定“执行当代形式种族主义、种族歧视、仇外心理和相关的不容忍现象世界会议的国家行动计划”。特别重要的是对所谓的 Bossi-

Finl 移民法特别是庇护法进行改革；通过综合庇护法和政策；承认罗姆人和辛提人为国家少数民族，对他们的文化和语言进行保护；

- 将反对种族主义与长期建设民主、平等、文化间和多文化社会结合起来，推动不同民族之间的相互了解和互动，将反对种族主义与长期建设真正民主和互动多文化联系起来。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY
FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE, DOUDOU DIÈNE, ON HIS
MISSION TO ITALY (9-13 October 2006)**

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I. INTRODUCTION

1. The Special Rapporteur visited Italy from 9 to 13 October 2006. He travelled to Rome, Lampedusa, Siracusa, Ragusa and Palermo. He met with the Ministers and other high-public officials of the Ministries of Education, the Interior, Justice, Rights and Equal Opportunities and Social Solidarity. He also met with the Vice-President of the Supreme Court, members of various political parties represented on the Parliamentary Commission on Foreign and Constitutional Affairs and of local Government, including the police, and with the Vice-President of the Italian Federation of Football. Furthermore, he met with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and a wide range of national and international non-governmental organizations (NGOs) active in the combat against racism and xenophobia. He visited a Roma and Sinti community in Rome, met with representatives of the Jewish and Muslim religious communities as well as journalists and trade unionists, and visited the reception centres at Lampedusa and Cassibile and the Temporary Stay and Assistance Centres (Centri di Permanenza Temporanea e Assistenza, CPTA) of Ragusa, where he had the opportunity to meet with migrants and asylum-seekers of African, Eastern European, Asian and South American origin.

2. The Special Rapporteur carried out his visit in excellent conditions, thanks to the full cooperation of the Italian authorities. He also thanks NGOs, the communities he met and UNHCR for their excellent support.

II. GENERAL BACKGROUND

A. Ethnic and demographic situation

3. Five per cent of Italy's population of 58,751,711 are estimated to be of foreign origin. Eastern Europeans constitute the greatest number of foreigners, the four largest groups being Albanians, Moroccans, Romanians and Chinese.¹ Official sources estimate a population of 120,000-150,000 Roma and Sinti.

4. Since the late 1980s, Italy, like other European countries, has evolved from a country of emigration to a country of immigration. Estimates indicate that between 1876 and 1970 around 25 million Italians emigrated to the Americas and Australia mainly in search of work and the improvement of their living conditions.² Since the 1970s, Italy has progressively become a recipient of migrant populations, experiencing significant migratory pressure and witnessing the arrival of populations from Eastern Europe, North Africa, Asia and South America. In its recent history, Italian society, sharing a common historical, cultural, ethnic, linguistic and religious background, has become exposed to an increasing process of multiculturalization, involving in particular cultures of non-European origin.

¹ Information updated to 1 January 2006 provided by the Inter-Ministerial Committee of Human Rights of the Italian Ministry of Foreign Affairs.

² See *Encyclopaedia Britannica* online. <http://www.britannica.com/eb/article-26980/Italy>.

B. The legal system

5. The 1948 Constitution proclaims that the Italian legal system shall conform to the generally recognized principles of international law (art. 10.1). Italy is party to six of the seven major international human rights instruments³ and their optional protocols, the exception being the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, Italy is party to the 1951 Convention relating to the Status of Refugees and the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime (the Palermo Protocol).

6. The Italian Constitution recognizes the principle of equality before the law and the prohibition of discrimination on the basis of sex, race, language, religion, political opinions and personal or social conditions for all, citizens and non-citizens (arts. 2 and 3), as confirmed by various rulings of the Constitutional Court.⁴ It recognizes the right to freedom of religion (arts. 19 and 8), the right to asylum, and determines that the legal status of foreigners shall be regulated by law in conformity with international law and treaties (arts. 10.4 and 10.2).

C. The political and administrative structure

7. Italy is a parliamentary democracy headed by a President of the Republic elected by the representatives in Parliament. The Parliament, composed of the Senate and the Chamber of Deputies, constitutes the legislative branch; the executive branch, responsible for the general policies of the Government, is the Council of Ministers, headed by the Prime Minister, who is usually the leader of the majority party or coalition of political factions, appointed by the President and confirmed by the Parliament; the judiciary is a three-level system of courts with a Supreme Court as the highest court of appeal and a Constitutional Court with the authority to decide on the constitutionality of laws and conflicts of competence. Italy is administratively divided into 15 regions and 5 autonomous regions, provinces and municipalities with their own statutes, powers and functions.

D. Methodology

8. The Special Rapporteur based his investigation on three main questions which he addressed to all his interlocutors: 1. Is there racism, racial discrimination, xenophobia and related intolerance in Italy? 2. If yes, what are their manifestations? 3. What are the policies adopted by the Government to fight against these phenomena? In the following two sections, the

³ The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

⁴ See decisions 120 of 15 November 1967 and 104 of 19 June 1969 and order 215 of 1 July 1983.

Special Rapporteur reflects on the main issues and concerns that were reported to him by the Government and local authorities (section III) and the civil society and concerned communities (section IV) in response to these three main questions. Thereafter, he presents his assessment of the state of contemporary forms of racism, racial discrimination, xenophobia and related intolerance in Italy (section V), followed by his recommendations (section VI).

III. PUBLIC AUTHORITIES: GENERAL LEGAL AND INSTITUTIONAL FRAMEWORK TO COMBAT RACISM, DISCRIMINATION AND XENOPHOBIA

A. Legal strategy and policies to combat racism, xenophobia and racial discrimination

9. The Italian legal framework contains a wide range of criminal, civil and administrative law provisions to combat racism, which, in the view of the government officials with whom the Special Rapporteur met, provide the victims of racial discrimination with comprehensive legal protection. While the legal framework is generally considered adequate, some voices within the Government acknowledged the need to improve its implementation by increasing awareness among the general public and concerned groups, but among law enforcement agents, members of the judiciary and other public officials as well.

10. In the field of civil and administrative law,⁵ particularly relevant is Legislative Decree 215/2003 (LD 215/2003), aiming at the implementation of the principle of equal treatment of all persons irrespective of their racial or ethnic origin (art. 1). Moreover, the Italian legal system foresees civil action against discriminatory acts committed by private individuals or public administration on racial, ethnic or religious grounds (arts. 4 and 5) and on nationality grounds (article 44 of Legislative Decree 286/1998 governing immigration and the status of foreign nationals). This form of civil action aims at ending prejudicial behaviour and the effects of discrimination and grants compensation for damage suffered. Individuals and duly registered legal associations and bodies are able to initiate judicial or administrative proceedings on the grounds of individual or collective discrimination.

11. While the Italian Criminal Code as such contains no specific provision to combat racism, recently amended legislation establishes a criminal law framework (the Mancino Law as modified by Law No. 85/2006).⁶ Firstly, racial motivation constitutes a special aggravating circumstance, increasing the punishment by one half for all offences committed with the intention to discriminate on the basis of race, ethnicity, or national or religious background.

⁵ In this field Legislative Decree 216/2003 and Legislative Decree 215/2003 incorporating into domestic law European Directives 2000/78 and 2000/43, respectively, are to be mentioned. Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation. Council Directive 2000/43/EC implements the principle of equal treatment of persons irrespective of racial or ethnic origin.

⁶ See Law No. 654/1975 as amended by the Mancino Law (Law No. 205/1993) recently modified by Law No. 85/2006.

Secondly, ex officio investigation and prosecution are foreseen for racially aggravated offences. Thirdly, the establishment of, participation in, or assistance to organizations, associations, movements or groups aiming to incite racial discrimination or hatred is prohibited. Also prohibited are propaganda advocating racial or ethnic superiority or hatred, and instigation to commit or the commission of discriminatory or violent acts on racial, ethnic, national or religious grounds. The amendment introduced in February 2006 by the previous Government to the Mancino Law⁷ mitigated the punishments attached to the foregoing offences by reducing the initial maximum term of 3 years' imprisonment to either a fine of 6,000 euros or 18 months' imprisonment. The current Government has informed the Special Rapporteur, however, that a proposal to restore the more severe punishments is under examination. It has also removed the reservation introduced by the former Government that impeded the adoption of a European Union (EU) Council framework decision aiming at the introduction of criminal provisions common to all member States in relation to racist and xenophobic offences.

12. Different institutions and mechanisms dealing with the fight against racism and discrimination have been established: the Inter-Ministerial Committee on Human Rights (1978); the Anti-Discrimination and Anti-Semitism Committee (2004), tasked with monitoring regression with respect to forms of racism, intolerance, xenophobia and anti-Semitism; the Territorial Immigration Councils, tasked at the municipal level with analysing the challenges of integration and multiculturalism; and the Council for Italian Islam (2005) as an advisory body of the Minister of the Interior examining the problems of immigrant communities of the Islamic faith in particular. Especially relevant is the National Office for the Fight against Racial Discrimination (Ufficio Nazionale Antidiscriminazione Razziale, UNAR) (2004), which provides assistance to the victims of discrimination, including legal aid, launches prevention and awareness-raising campaigns, promotes positive actions, and monitors the implementation of the principle of equal treatment.⁸ During 2005, the Contact Centre of UNAR received more than 10,000 calls, 282 of which reported cases of direct or indirect discrimination or harassment on the grounds of ethnic or racial origin. Thirty per cent of these cases related to discrimination in the workplace, followed by complaints regarding housing, the police, public services and companies, schools and education, public transport, the mass media, health, public life and financial services. It was indicated that the prototype victim is an African man between 30 and 40 years old living in Italy for at least five years. As recognized by public officials, the number of cases of racial discrimination registered by UNAR does not fully represent the reality as illegal migrants are afraid to report their situation, including because they lack awareness about UNAR legal assistance to victims.

⁷ Ibid.

⁸ UNAR was established by LD 215/2003. As defined in the UNAR 2005 report "One Year of Activities Against Racial Discrimination", its aim is "to foster the process of racial integration within the social and demographic evolution of the country, which shows a growing number of immigrants".

B. Legislation on and policies regarding the Roma and Sinti community

13. Although there are no precise data available, official estimates indicate that there are between 120,000 and 150,000 Roma and Sinti in Italy. Approximately 50 per cent are Italian citizens, while most of the remaining are Roma from the Balkans and, increasingly, from Romania. Roma holding Italian or EU citizenship have the same rights and duties as any other citizens while the non-EU Roma are subject to immigration laws. Local authorities have the primary responsibility for addressing their situation, particularly the improvement of the living conditions of the non-Italian Roma population.

14. Roma and Sinti, usually referred to by the authorities as Travellers or nomads, have not been the subject of a comprehensive national law or policy, but of various legislative initiatives at the regional or local level on the protection of their culture.⁹ Under the “Norms for the protection of historical linguistic minorities”, Roma and Sinti have not been recognized as a historical linguistic minority.¹⁰

15. The Government acknowledged the need to adopt comprehensive legislation and policies addressing the specificity and needs of this population, as well as the need to reinforce the existing ad hoc solutions and pilot projects in cooperation with civil society. Proposals before the Senate for the “Acknowledgment and protection of the Roma people, Sinti and Travellers minorities” and the “Acknowledgement and protection of the Roma, Sinti and Travellers populations and safeguard of their cultural identity” have recently been introduced. In October 2006 a working group was established at the Ministry of Foreign Affairs, which drafted a document based on all recommendations regarding Roma and Sinti from the different international bodies which is intended to serve as the working basis for a comprehensive bill. A recently established inter-ministerial working group is elaborating a draft bill on the rights to non-discrimination, recognition of specificity and protection of the members of the Roma, Sinti and Travellers communities. The Ministry of Labour, Social Solidarity and Health has adopted a National Plan against Poverty and Social Exclusion that for the first time includes the Roma, Sinti and Travellers as a beneficiary group.

C. Special agreements with religious communities

16. The largest religious group in Italy, according to various estimates, are the Roman Catholics (97 per cent), followed by the Muslims (1.5 per cent); there are 363,000 Protestants, 230,000 Jehovah’s Witnesses, 30,000 Buddhists and 30,000 Jews in Italy.

⁹ Since 1984 various regions have promulgated laws for the protection of the culture of Roma and Sinti, such as: Veneto, Lazio, the Autonomous Province of Trento, Sardinia, Friuli-Venezia Giulia, Emilia-Romagna, Tuscany, Lombardy, Liguria and Piedmont.

¹⁰ This law, adopted in 1999, protects the language and culture of the Albanian, Catalan, German, Greek, Slovenian and Croatian populations as well as those of the French/Provençal-, Friulan-, Ladino-, Occitan- and Sardinian-speaking communities. (Law No. 483/1999).

17. Religious denominations other than the Catholic Church have the right to organize themselves according to their own statutes. Their relationship with the State is regulated through bilateral agreements, known as *intese*, between the Italian State and the Italian representatives of each denomination, (article 8.3 of the Italian Constitution). At present, a draft law on religious liberty and on the bilateral agreements is being revised and will be submitted for approval to Parliament.

18. So far, bilateral agreements have been entered into with the Churches represented by the Waldesian Table, the Assemblies of God in Italy, the Union of the Christian Seventh-Day Adventist Churches, the Union of the Italian Jewish Communities, the Italian Christian Evangelical Baptist Union and the Lutheran Evangelical Church in Italy. The *intese* with the Jehovah's Witnesses and with the Italian Buddhist Union have been signed but not yet ratified.

19. Four Islamic organizations have applied for *intese* though none has been approved so far.¹¹ In the views of various governmental interlocutors, the lack of a centralized authority and a unitary approach by the different Islamic denominational organizations has prevented the conclusion of an *intese*. Nevertheless, as expressed by the Italian authorities, "it is possible for the Government to start the procedure for the conclusion of different *intese* with Islamic denominational organizations, whereby each of them would be representing its associates-believers".

D. Immigration

20. The immigration law in force, the so-called Bossi-Fini Law,¹² besides promoting immigration from non-EU countries linked to employment, aims at curbing illegal entries with a

¹¹ The Islamic Cultural Centre of Italy applied in 1991 for an *intese*, which has not been granted because its particular organizational structure is composed of diplomatic representatives of the Islamic countries. The Italian Islamic religious community (CO.RE.IS), comprised of Muslim Italian citizens, applied in 1998 for a bilateral agreement and recognition as a juridical person. In 2001 the draft decree was submitted to the Council of State, which returned a positive assessment. The draft decree is at the Ministry of the Interior to be further improved in some formal aspects. The Union of the Islamic Communities and Organizations in Italy, UCOII, is comprised of some 30 Islamic centres. It submitted an application in 1992 without requesting recognition as a juridical person. Negotiations have not begun. The Association of Italian Muslims (AMI) founded in 1982 in Rome applied for an *intese* in 1997 but also did not request recognition as a juridical person.

¹² The Bossi-Fini Law (Law No. 189/2002) entered into force in September 2002 and its implementing legislation, Presidential Decree 303 adopted in 2004, entered into force on 21 April 2005. The Bossi-Fini Law amended the *Testo Unico*, the Consolidated Act of measures governing immigration and norms on the condition of foreign citizens (Law No. 191/1998 and Law Decree No. 286/1998), which had incorporated article 1 of Law No. 39/1990 (the Martelli Law) and the Turco-Napolitano Law (Law No. 40/1998), which had replaced the previous Law No. 943/1986 and all articles but article 1 of the Martelli Law.

three-fold strategy: (i) strengthening the control of borders;¹³ (ii) punishing smugglers, traffickers, and employers of illegal immigrants;¹⁴ and (iii) rejecting illegal immigrants at the border, expelling them from the territory and imprisoning those who fail to execute an expulsion order.¹⁵

21. Non-EU citizens, other than those entering for tourism, study, business, or family reasons, can enter Italy to perform subordinate work, including on a seasonal basis, as well as autonomous work within the limits set by the quotas determined yearly by ministerial decree,¹⁶ provided that a work and residence contract exist prior to arrival. In the residence contract, a prerequisite for obtaining a residence permit, the employer undertakes to guarantee adequate accommodation and the costs of the return travel. As a response to the number of illegal immigrants on Italian territory, 1,369,258 immigrants have been regularized through four regularization processes in 1989, 1990, 1995 and 2002.

22. Once foreigners have entered Italy legally they are allowed to reside as long as they have a valid residence contract and permit for employment or a residence card, obtainable after six years of uninterrupted residence provided that the foreigner has sufficient income.¹⁷ The Bossi-Fini Law, in comparison with previous legislation: (i) reduced the duration of residence permits from two to four years to one to two years; (ii) required an additional year for the granting of a residence card; (iii) and halved to six months the time given to a foreigner who had lost his/her job to find new employment before losing the work permit. The Bossi-Fini Law also established an office for immigration matters responsible for the entire procedure regarding the hiring of foreign workers (“One-Stop Shop”) in each province at the local office of the Government (*prefettura*).

¹³ Ibid., art. 11.

¹⁴ The smuggler is punished with imprisonment from 3-12 years and a fine of up to 15,000 euros and the traffickers for the purpose of prostitution and sexual exploitation or other purposes involving minors with imprisonment of 5-15 years and a fine of 25,000 euros. An employer who employs foreign workers lacking a residence permit or whose permit has expired without application for its renewal is punished by detention for three months to one year and a fine of 5,000 euros for each worker employed. See articles 12 and 22.12 of the Consolidated Act as amended by the Bossi-Fini Law.

¹⁵ See article 13 of the Consolidated Act as amended by the Bossi-Fini Law.

¹⁶ The President of the Council of Ministers issues a yearly decree by which quotas are established determining the sectors of work and the numbers of workers needed, based upon the needs of the labour market. Nationals of those non-EU countries with which cooperation agreements have been signed on the regulation of the incoming flow and readmission procedures are favoured.

¹⁷ See article 9 of the Consolidated Act as amended by the Bossi-Fini Law.

23. Foreigners illegally entering or staying in Italy who fail to meet the requirements provided by the law, or for reasons of public order or national security may be rejected at the border, returned under escort to the frontier, expelled, or receive an expulsion order to leave the country within 5 or 15 days. When rejection or expulsion is not immediately enforceable, illegal immigrants are held in a CPTA for a maximum period of 60 days, as extended by the Bossi-Fini Law.¹⁸

24. Administrative orders for expulsion are validated by a judge of the peace. Appeals may be filed, though this does not suspend the person's removal. Failure to obey the injunction to leave or the expulsion order is a criminal offence punishable by between one and five years' imprisonment.¹⁹ The presence of foreign nationals in prisons has increased considerably in recent years, accounting in some cases for 50 per cent of the prison population. In May 2006, of the 20,230 foreign prisoners (33 per cent of the total prison population) 11,590 were released in implementation of the collective pardon provided in Law No. 241/2006. The remaining 8,640 foreign prisoners come mainly from Morocco, Albania, Tunisia, Romania and countries of the former Yugoslavia.

25. Italian authorities have emphasized the importance of integration, though they have acknowledged that assimilation was the model that had been followed so far. Italian authorities place particular importance on knowledge of the language and the acceptance of Italian values as contained in the Constitution, such as equality between men and women, as a basis for the integration of foreigners. During the visit, the Special Rapporteur was informed about an ongoing process by which "a charter of values, in consultation with all communities, is to be drafted to provide for a common framework to allow a cohabitation model".²⁰ The Government has also announced its intention to reform the immigration legislation in force. In November, the Council of Ministers submitted a bill to Parliament, in which legal or illegal migrants who were victims of abuse and exploitation in the agricultural and construction sectors would be granted a special stay permit on the same terms as victims of trafficking. The Minister of the Interior has set up a commission to identify ad hoc actions to fight violence against and exploitation of foreign workers. The draft law also foresees penal and civil sanctions ranging from one to eight years' imprisonment and a fine of 9,000 euros, respectively.

E. Asylum

26. From 1990 to 2006, Italy examined 142,198 petitions for the recognition of refugee status. During the 1990s, the Balkans, mainly Albania and the former Yugoslavia, was the place of origin of the majority of asylum-seekers; it was gradually replaced by countries of sub-Saharan and Central Africa, the Congo, Liberia, Sierra Leone and Somalia, as well as Ethiopia and Eritrea. In 2005-2006, 19,655 asylum petitions were examined.

¹⁸ See articles 10, 13-16 of the Consolidated Act as per Legislative Decree 286/1998.

¹⁹ See article 12 of the Consolidated Act as amended by the Bossi-Fini Law.

²⁰ Information shared with the Special Rapporteur during his meeting with the Minister and officials of the Ministry of Rights and Equal Opportunities.

27. Asylum is currently regulated by the 1951 Convention relating to the Status of Refugees, article 10.3 of the Constitution, the Dublin Convention, article 1 of the Martelli Law, the Bossi-Fini Law, as well as Legislative Decree 140/2005.²¹ The Italian authorities acknowledged that there is still no Organic Law on the right to asylum as referred to in the Constitution.

28. The Bossi-Fini Law, through its implementing decree, has decentralized the refugee status determination procedure by establishing seven Local Asylum Commissions (LAC) throughout the territory as first instance administrative bodies and a National Asylum Commission (NAC) as the coordination body. LACs are responsible for examining applications, interviewing the asylum-seeker and granting asylum or humanitarian protection in accordance with the law. NAC may revoke or terminate the status granted. Upon refusal of asylum status the applicant is entitled to appeal the decision before the civil courts, though the appeal does not suspend the expulsion order or its execution. Asylum-seekers are held in “identification centres” while the first instance decision on their refugee status is being adopted, which may take 20 or 35 days in accordance with the urgent and ordinary procedures provided in Bossi-Fini Law.²² Asylum-seekers may also be held in reception centres in those municipalities that have joined the Asylum-Seekers Protection System.

F. Citizenship

29. The current citizenship law adopted in 1992 adheres to the principle of *jus sanguinis* by which the transmission of citizenship takes place by descent from Italian citizens, while the principle of *jus soli* (the acquisition of citizenship by birth on a given territory) is confined to particular cases.²³

30. A new draft Law on Citizenship is being examined by Parliament. The draft law introduces three major changes. First, regarding the acquisition of citizenship by minors, the law introduces the principle of *jus soli*, in addition to the principle of *jus sanguinis* as foreseen in the 1992 law in force. Children born in Italy to foreign parents will no longer need to reside continuously in Italy from birth to the age of 18 years to obtain Italian citizenship if one of their parents was either born in Italy or legally resident for at least five years at the time of birth. In

²¹ Legislative Decree 140/2005 was adopted in implementation of European Directive No. 2003/9/CE establishing minimum standards for the reception of asylum-seekers.

²² Two different procedures are foreseen by the Bossi-Fini Law. A simplified procedure applies to asylum-seekers who were arrested due to illegal entry or attempted illegal entry, or who are irregularly staying on the Italian territory, or who applied for asylum after receiving an expulsion or rejection order; an ordinary procedure applies to those asylum-seekers who do not qualify for the simplified procedure.

²³ See Law No. 91 of 5 February 1992.

both cases, parents of minors are required to have a minimum annual income.²⁴ Regarding foreign minors not born in Italy, the draft law foresees three requirements for the acquisition of citizenship: (i) an application by the natural or legal parents (if one of them was born in Italy or had legally resided there for five years) or an application of the minor on turning 18 years; (ii) uninterrupted legal residence of the minor for at least five years; and (iii) completion by the minor of a school cycle or vocational training or one year's work. The second major change would reduce from 10 to 5 years the period of uninterrupted residence required to qualify for naturalization, provided that the income requirements are met and that in all cases involving adults a test determining a degree of linguistic and social integration is passed. Last, regarding naturalization by marriage, the draft would extend the original six months of residence in Italy to two years from the date of marriage, with a view to countering so-called "marriages of convenience".

G. Combating racism in sport

31. Decree Law 162/2005 was adopted to provide new measures aiming at preventing and repressing dangerous behaviours during sports events. This decree also set up a National Observatory on Sports Events, whose tasks are first, to monitor acts of violence and intolerance committed at sports events; second, to promote initiatives for the prevention of violence and intolerance in collaboration with associations and local, public and private bodies; and third, to publish an annual report on acts of violence and intolerance during sports events. The Code of Justice in Sports was amended in September 2006 to introduce disciplinary and pecuniary sanctions for those who directly or indirectly offend, denigrate or insult on grounds of race, religion, colour, etc.²⁵

32. UNAR has directly addressed racism in sport by launching awareness-raising campaigns for TV and mass media, as well as among the members of the Football Federation and its associated leagues, that led to the establishment of a working group to identify the existing regulations and to design new ones to combat racism in football. In addition, during one of its awareness-raising activities - the Week of Action against Racism - UNAR undertook numerous activities at sports events.

IV. VIEWS OF CIVIL SOCIETY AND CONCERNED GROUPS

A. General legal and institutional framework to combat racism, xenophobia and discrimination

33. Civil society denounced the following major obstacles: the lack of a national action plan to combat racism, xenophobia and related intolerance; the need to improve the implementation

²⁴ The said income conditions refer to the annual income required in order to obtain a long-term EU residence permit, the latter being the "minimum pension" granted by the State, which at the end of August 2006, stood at 4,962.36 euros (equivalent to 381.72 euros x 13 months).

²⁵ See article 9 bis of the Code of Justice in Sports (*Codice di giustizia sportiva*).

of current anti-discrimination legislation by increasing the knowledge of judicial and law enforcement officials about existing legislation, as well as publicizing and informing about the civil and criminal remedies available to victims of racial and ethnic discrimination; the instrumentalization of racism by some political parties; the lack of electoral rights (active and passive) preventing political parties from taking the interests of non-citizens fully into account; and the lack of independence of UNAR as a body within the Ministry of Rights and Equal Opportunities, in contravention of article 13 of the Racial Equality directive. In the field of sports, civil society highlighted the fact that some internal regulations of various sport federations had not been yet harmonized with LD 286/98. As a consequence non-EU children are not allowed to join official competitions at the amateur and pre-professional levels (from 13 to 17 years old). Civil society also felt that the National Federation of Football should be more proactive in raising awareness within the local federations on the existing and new legislation adopted to combat racism in sports.

B. Legislation on and policies regarding Roma and Sinti

34. Roma and Sinti began to settle in Italy in the fifteenth century. The Sinti are thought to have come overland from the north and settled in the north of Italy, while the Roma crossed the Adriatic Sea from the southern Balkan areas and settled mainly in the south. These communities are generally referred to as “*zingari*” a term which carries negative connotations associated with dirtiness, or “nomads”, the latter reflecting the still prevailing belief in their nomadic nature. Yet, only a small percentage of Sinti engage in economic activities entailing an itinerant lifestyle, and most of the Italian Roma are sedentary.²⁶ NGOs estimate that there are approximately 550,000 Roma and Sinti in Italy, of whom the largest group are foreign Roma citizens, mainly from Romania and the former Yugoslavia.

35. During his visit, the Special Rapporteur visited a Romani community located in a temporary camp in “Viale dello Scalo Tiburtino” and a Sinti community in “Via Tommaso Smith in Casalbruciato” near Rome.

36. The Romani community was composed of around 250 Romanian Roma, 60 per cent of them children. They had been living for the past two years in an unoccupied building till they were evicted in September 2006. The community expressed their discontent about poor living conditions and the lack of assistance from the authorities. The Special Rapporteur witnessed their lack of access to drinking water and electricity as well as the inadequate conditions of their improvised “houses” made with plastic, aluminium sheets and wood, with earth floors. Roma representatives complained that the consequences of living under difficult hygienic conditions nurtured the already existing prejudices against them. They explained that the children were being rejected in nearby schools, allegedly because of “too many foreign children”. The Special Rapporteur was informed that negotiations to solve this problem were ongoing with the Ministry of Education.

²⁶ Organization for Security and Cooperation in Europe (OSCE), Report on the Political Participation and Media Representation of Roma and Sinti in Italy, p. 6.

37. The Sinti community was composed of 40-50 members of whom 8 were children regularly attending school. All members of this community had been born in Italy, had Italian nationality, spoke Italian and described themselves as being integrated with their non-Sinti neighbours, who, unlike the Italian Sinti, lived in regular buildings surrounding their caravan camp. The representatives explained that they had received an eviction order without an alternative location and expressed their strong opposition to the announced measure, in particular as it would lead to the disruption of their children's school attendance. Despite their legal status, they identified unemployment as the major problem, particularly due to their difficulties in accessing jobs outside the recreational sector, which was in crisis.

38. According to the NGO community, the discrimination these communities are facing is institutionalized and manifests itself in various forms. Firstly, among the Roma and Sinti born in Italy, an important number still lack Italian citizenship despite having been born to parents of Italian origin. These Roma are de facto stateless and should, in the view of civil society, receive especial attention from the Government and be the subject of special provisions within the citizenship law and other relevant legislation for their regularization and acquisition of citizenship. In this regard, NGOs noted with concern that the recent draft citizenship law, despite its positive aspects, would not offer any solution.

39. Second - and in contrast to other linguistic minorities - Roma and Sinti remain unrecognized as a minority, lacking the recognition and protection of their language and culture, concerning which there is scant knowledge. Roma and Sinti are not considered by the authorities to fit the ad hoc definition of a national minority, particularly as they do not (or are not perceived to) live in well-defined areas of settlement and do not conform to the traditional profile of a territorially concentrated national minority. Additionally, Roma foreign citizens are said to benefit to a lesser extent than other groups from regularization processes and face more difficulties in accessing the regular labour market due to their double condition of being Roma and immigrants. There is no comprehensive law, policy or institution dealing with the Roma and Sinti community addressing their specificity, nor have they so far been included in the National Plan against Poverty and Social Exclusion as a beneficiary group.

40. Third, they are the ethnic group facing the heaviest discrimination in housing, education and health as well as employment and suffer from racist violence.²⁷ Up to one third of the Roma and Sinti population live segregated from the rest of the society in authorized or unauthorized camps in prefabricated houses or caravans, often in poor conditions and without security of tenure, access to drinking water, electricity, heating and sanitation, insulation and ventilation, etc. Moreover, associations highlighted that these camps are often subject to abusive police raids, during which the members of these communities are exposed to verbal abuse. Regarding their access to education, Roma children, like all other children, have the right and duty to attend compulsory education irrespective of their legal status. Reports have highlighted the difficulties concerning the integration of Roma children at school and the occurrence of incidents of bias and discrimination. In the view of the NGOs working in this field, authorities need to systematically address the high dropout rate of Roma children, particularly girls forced into early marriage and

²⁷ See European Network Against Racism (ENAR) 2006 Shadow Report, pp. 18, 21-23 and European Commission against Racism and Intolerance (ECRI) 2006 Report on Italy, pp. 27-28.

domestic work at home, by replacing the current ad hoc projects with comprehensive long-term programmes involving the families, schools, police and local authorities. Lack of employment is identified as one of the major problems affecting the Roma and Sinti community. Much needs to be accomplished in the areas of housing, unemployment, education and health care.

C. Legislation on and policies regarding migrants and asylum-seekers

41. According to the information received from civil society, there are approximately 3.2 million regular and 500,000 irregular immigrants.²⁸ Illegal migration flows into Italy originate mainly from Asia (e.g. the Philippines, China), South Asia (Bangladesh, Sri Lanka), Africa (Nigeria, Ghana), Eastern Europe (Albania, Romania, the countries of the former Yugoslavia, Moldova, etc.) and the States of the former USSR. The most frequent routes are located along the Italian-Slovenian border and the Adriatic coast, particularly in Puglia and Sicily (the islands of Lampedusa and Pantelleria), and there are also reported cases of entry by air via both large and small airports.²⁹

42. During his visit to the reception centres on Lampedusa, the centre at Cassibile and the CPTA at Ragusa, the Special Rapporteur met with male and female immigrants and asylum-seekers from Morocco, Tunisia, Somalia, Ethiopia, Eritrea, Nigeria, Niger, Ukraine, Romania, Moldova, Colombia and the Philippines. At the Lampedusa centre, he witnessed the arrival of a boat with 11 Tunisian immigrants and followed their reception process. During these contacts the Special Rapporteur learned about the difficulties most of the immigrants arriving by sea had experienced in trying to reach the Italian coasts, either to escape from persecution in their countries of origin or to search for a better life. He also observed the living conditions in the centres and the system in place to ensure the rights of the immigrants.

43. The current “stay for work permit” scheme within an entry-quota system and the imprisonment of illegal migrants failing to abide by their expulsion orders were seriously questioned by different interlocutors. In their view, the Bossi-Fini Law fails to prevent migratory flows and leads to a situation where migrants find themselves in an illegal situation with no possible means of legalization, their choices being either to return to their countries of origin or to stay in Italy as a “clandestine”. Under the current legal framework, life as an illegal immigrant in Italy implies a greater exposure to poverty and various forms of discrimination and abuse, particularly in the labour market, and a high probability of imprisonment for failing to obey the injunction to leave the country. Being a legal migrant, on the other hand, entails a high probability of becoming illegal if the migrant loses his/her job, increasing vulnerability to abuse. Legality is not necessarily accompanied by integration in society, but often rather by discrimination in the housing, employment and education sectors.

²⁸ The figure for regular migrants corresponds to the information contained in the Caritas 2005 Dossier and the 170,000 new residence permits provided in 2006, while the estimates on irregular immigration refer to the 370,000 requests under the “flows decree” and the official figure of 120,000 ordered but not implemented expulsions.

²⁹ See *Trafficking in Persons and Smuggling of Migrants into Italy*, pp. 79-80, analysing the phenomenon and suggesting remedies.

44. According to civil society, particular areas of concern relate to the lengthy and often discretionary decision-making processes in the granting and revocations of stay, work and residence permits despite the introduction of the “One-Stop Shop”; the different standards applied at various courts of appeal in granting free legal aid; the lack of systematic translation of official documents for foreigners; and particularly the lack of suspensive effect of an appeal against an expulsion order before the judge of the peace.

45. Regarding the situation in CPTAs, concerns were expressed about the detention per se of asylum-seekers or irregular migrants, and in any case about the excessive period of “administrative detention” foreseen in the law, especially when the expulsion of foreigners is not immediately enforceable. Additionally, NGOs strongly criticized the existence of “multipurpose” centres, defined as reception centres though functioning as CPTAs, such as the centre in Cassibile. Particularly worrisome in this regard is the lack of clarity as to the applicable legislation directly affecting the migrants and asylum-seekers present in the centres. As to the management of the centres, a common concern was expressed regarding the lack of transparency and free access of lawyers, medical doctors and NGOs to the detriment of the quality of services and legal protection granted to immigrants and asylum-seekers.³⁰

46. During his visit to the Women’s Centre of Ragusa, the Special Rapporteur received first-hand information about cases which, if confirmed, raised serious questions concerning the psychological and legal protection granted as well as information given to the women held there. A group of survivors, who had witnessed the death of 80 fellow immigrants in the course of their voyage, had not received any psychological counselling and were still traumatized. A woman at risk of deportation showed the Special Rapporteur her marriage certificate testifying to her marriage to an Italian and the documents stating that her son had been granted refugee status due to fear of persecution in their country of origin. In a separate incident widely covered by the media, a group of asylum-seekers and immigrants denounced mistreatment and discrimination in the centre at Caltanissetta (Sicily), where sub-Saharan Africans were subjected to discriminatory treatment by some of those working in the centre.³¹ It was also acknowledged, however, that the quality of the reception migrants received in the centres, particularly in Lampedusa, had improved, though it still depended on the number of persons arriving on a particular day. With a nominal capacity of 186 persons, only a week before the Special Rapporteur’s visit, the Lampedusa centre had received 600 migrants. While there is a project to enlarge the centre, NGOs voiced scepticism about its actual implementation as the enlargement has been pending for years.

³⁰ Under the legislation in force (DPR 303/2004), the Prefect (head of the Government Territorial Office) entrusts the running of the centre to local, public or private authorities operating in the field of social work or assistance to asylum-seekers or migrants.

³¹ Reportedly, unlike North Africans and migrants and asylum-seekers from other continents, sub-Saharan Africans were required to pay in cash for services that should be provided for free according to established rules and norms, such as food and telephone cards, and had to wait in line to receive medical treatment.

47. In addition, civil society strongly agreed on the need to adopt a comprehensive law on asylum separate from the one regulating immigration. They expressed concern that the appeal of a rejected asylum-seeker did not suspend the individual's expulsion, and considered insufficient the existing measure by which, at the request of the asylum-seeker, the Prefect may grant permission to stay in Italy until the court's decision on the appeal. It was also said that in practice the granting of refugee status seemed to be limited to certain nationalities, and that often humanitarian protection was provided instead.

48. Civil society welcomed the attempt of the new Government to introduce new legislation on citizenship. Concerns were nevertheless expressed regarding the linking of access to citizenship by minors with the situation of their parents, in particular regarding income. The new law is said to disregard the particular situation of Roma, who often lack legal documents and the minimum income. Thus, they would continue to be excluded from the benefits of naturalization and legalization exercises for unauthorized migrations.

D. Access of migrants to employment, health and housing

49. Civil society emphasized the existence of segregation in the labour market as well as differences in treatment between indigenous and foreign citizens, reflected in poorer standards of safety, lower wages and inferior types of contracts. While male migrants work mainly in the building, metallurgical or agricultural sector, women migrants work mainly as caregivers and domestic workers and are highly represented in the prostitution and sexual exploitation sector.³²

50. A journalist of the newspaper *L'Espresso*, who pretended to be a Romanian immigrant and worked in the agricultural sector for a week in Foggia (Puglia), publicized the slavery-like conditions faced by legal and illegal migrants working in the agricultural sector, particularly in Puglia, Campania, Calabria and Sicily.³³ In Foggia, for which 1,600 permits for seasonal work had been foreseen by ministerial decree in 2006, there are said to be 5,000-7,000 migrants working under exploitative conditions. These male and female migrants come mainly from Bulgaria, Poland, Nigeria, Niger, Mali, Burkina Faso, Uganda, Senegal, the Sudan and Eritrea and are forced to work 16 hours a day for 15-20 euros (if paid), with no drinking water, little food, and constant exposure to racist verbal abuse and battery from the gangmasters supervising their work. There have been documented cases of death and severe battering of migrants attempting to escape. As reported in *L'Espresso*, a Romanian migrant was severely beaten after he was caught attempting to escape. After being left without medical assistance, he was finally hospitalized for two weeks to recover from serious wounds and septicaemia. Allegedly, as a result he was arrested for working illegally while the aggressors have not yet been brought to

³² The Merlin Law banned prostitution in brothels and mandated the registration of prostitutes and compulsory medical treatment. It is the exploitation of prostitution which is punished by the law. In 2003, trafficking in human beings was punished by Law No. 228/2003, covering all forms of internal and cross-border trafficking for different types of exploitation.

³³ <http://espresso.repubblica.it/dettaglio/I%20was%20a%20slave%20in%20Puglia/1373950>.

justice. Moreover, women migrants are subjected to demands for sexual services for obtaining and maintaining their jobs or the jobs of their male companions and are obliged to work long hours even if they are pregnant.

51. Various NGOs highlighted the vulnerable situation of women working as caregivers and domestic workers, which often leads to abusive working conditions, including long working days for little pay without social security. Additionally, it has been highlighted that migrant women constitute the highest percentage of those engaged in prostitution and the sex industry, reaching 90 per cent of street prostitutes in some cities.³⁴ A study by the Parsec Consortium indicates that there are about 17,500-22,700 foreign women in the street prostitution sector, the majority of them from Eastern Europe (41 per cent) and Africa (33 per cent) followed by Latin America (19 per cent), ex-Soviet countries (5.8 per cent), Asia (0.2 per cent) and others (0.8 per cent).³⁵ Around 7 per cent of them (1,292-1,629)³⁶ are said to be minors and a minimum number of 11,920 and a maximum of 15,425 are said to be women migrants engaged in indoor, as opposed to street prostitution.³⁷ The study estimates that a minimum of 2,508 and a maximum of 3,209 women were trafficked during 2004-2005. Official data for 2003-2004 indicate that there were 1,971 victims.³⁸

52. As an indicator of the health situation of migrants, it was explained that for three years civil society has been running a project providing medical care in the Puglia region to remedy the lack of assistance and unsanitary conditions. In May 2006 a refugee-like camp was established in Cassibile to house and provide basic humanitarian assistance to about 400 migrants working in the fields in that area. Among the seasonal farm workers in southern Italy, a survey conducted by Medici senza frontiere found that 30 per cent of the workers had become ill during their first six months in Italy, and after 19 months in the country, 93 per cent of the people surveyed needed to see a doctor. Infectious diseases, skin problems, intestinal parasites, and mouth, throat and respiratory infections (including tuberculosis) were widespread. The most severe illnesses were found among those immigrants who had lived in Italy the longest (18-24 months).

³⁴ See Study on National Legislation on Prostitution and the Trafficking in Women and Children, Trafficking in Persons and Smuggling of Migrants into Italy, Ministry of Education and Ministry for Equal Opportunities, p. 90.

³⁵ See Parsec Consortium Study, *Sintesi del Rapporto Finale del Progetto per una Ricerca-azione su "Prostituzione straniera e traffico di donne a scopo di sfruttamento sessuale. Analisi delle trasformazioni correnti nei principali gruppi nazionali coinvolti e nuove strategie di intervento di protezione sociale. Il caso dell'area metropolitana di Roma"*, p. 9.

³⁶ Ibid., p.15.

³⁷ Ibid., p. 30.

³⁸ See Study on National Legislation on Prostitution and the Trafficking in Women and Children, p. 89.

53. Housing is one of the sectors where discrimination is most obvious. Non-EU citizens face greater difficulties in renting and buying a house in comparison to Italians. In 2005 the courts ruled against the practice of some local authorities of limiting the assignment of low-rent public houses to foreign citizens or linking it to the number of years of residence in the country. The quality of housing is often inferior among non-EU citizens. Concerning the particular situation of seasonal workers, a survey estimated that 40 per cent live in abandoned buildings, 5 per cent had no accommodation and 36 per cent rented apartments lacking amenities such as running water, electricity and bathrooms.³⁹

E. Religious minorities: the Jewish and Muslim communities

54. The number of Muslims in Italy is estimated to be between 700,000 and 1 million out of a total population of 57 million. Some 30,000-60,000 Muslims are Italian citizens, of whom some 10,000 are converts to Islam. As described by some of the men and women originating from Arab or Muslim countries with whom the Special Rapporteur met and who have been long-time residents in Italy, the terrorist attacks of 11 September and its aftermath were a turning point for these communities. The generalization of the equation “Arab/Muslim equals terrorist, or at least fundamentalist” by the media, politicians, particularly of right-wing parties, and to a certain extent Italian society as a whole, was one of the first consequences perceived. Such negative sentiments were said to have increased after the terrorist attacks in Madrid and London. Furthermore, the implementation of security policies and measures to fight terrorism often exposed them to harassment, racial profiling and abusive checking by law enforcement officials. Moreover, incidents and attacks against the Muslim community or their places of worship were reported. A recent example is a demonstration organized by the Lega Nord, the Alleanza Nazionale and Forza Italia against the construction of a mosque in Colle Val-d’Elsa (Tuscany) on 16 December 2006. Following the demonstration, violent attacks against the mosque, which is in an early stage of construction, took place. A week before, a pig’s head was found on the land where the mosque is to be built.

55. Another major concern related to the lack of a bilateral agreement (*intese*) between the State and the Muslim community. It was felt by civil society that the arguments used by the former and current Governments, blaming a lack of a unified voice or institutions among the various Muslim groups for this situation, were not acceptable for various reasons. First, various bilateral agreements have been signed with a variety of different Christian denominations, without major problems. Second, some of these Muslim communities, which had undertaken all necessary proceedings in accordance with the law, have been awaiting a decision since 2001. Another question perceived as a discriminatory practice concerned the additional difficulties faced in the opening of private schools of Muslim countries, for example the case of the

³⁹ See Medici senza frontiere, *I frutti dell’ipocrisia* (March 2005) and ENAR 2006 Shadow Report, pp. 16-18.

Egyptian School in Milan.⁴⁰ Muslim organizations and parents have advocated that religious education in Islam should also be introduced into the curricula of public schools, but so far these calls have not yielded any concrete results.

56. According to representatives of the Jewish community with whom the Special Rapporteur met, that community, which has been present in Italy for more than 2,000 years, is well integrated in Italian society. Yet, there are still attacks against them, taking the form of anti-Semitic graffiti on walls, including swastikas, and occasional violent attacks on symbols or places of worship. In their view, these attacks often relate to their identification with the policy of the State of Israel rather than to their belonging to the Jewish faith. Recent studies highlight that individuals and groups belonging to the far right “constitute the most numerous and aggressive category of perpetrators of racist and anti-Jewish acts”.⁴¹

F. The role of the media

57. Various journalists highlighted the critical role the media continues to play in portraying a negative image of migrants and associating members of the Muslim faith with crime, invasion, danger, extremism and terrorism. When crimes are committed by persons of foreign origin or belonging to the Roma or Sinti community, their nationality or ethnicity is particularly emphasized. This has been recently reflected in a proliferation of press articles on rapes committed in the area of Bologna by persons of Moroccan origin triggered by an allegation of rape against a Moroccan regular migrant that was subsequently disproved. On other occasions, the media serve as a platform for the dissemination of racist and xenophobic ideas, as in an article published in *Il Tempo* in which Romanian citizens were characterized as a “very violent race, dangerous and overbearing”.⁴² Regarding the frequent equation of “migrant, Muslim, terrorist”, examples were given of the reaction of some media after the London attacks, warning of the dangers of having immigrants of the Islamic faith in Italy. Civil society and journalists stressed the need to sensitize the media concerning their responsibility in combating racism, xenophobia and racial discrimination, and proposals were made for the elaboration of a media code of conduct in this regard.

⁴⁰ This school was first wrongly referred to as a Koranic school by the media and some politicians, though it included in the curriculum the same number of hours that Catholic schools devote to the teaching of religion. Allegedly, the reasons given related to the absence of conditions in the school that had to be fulfilled before a permit could be granted. Nevertheless, the question was said to have become politicized and misrepresented by the media and required the intervention of the Minister of Education to be unblocked.

⁴¹ European Monitoring Centre on Racism and Xenophobia (EUMC) working paper, *Anti-Semitism: Summary overview of the situation in the European Union 2001-2005*, p. 21.

⁴² *Il Tempo*, 3 October 2006.

V. ANALYSIS AND ASSESSMENT OF THE SPECIAL RAPPORTEUR

58. After having collected and analysed the views of all parties concerned, the Special Rapporteur concluded that while Italian society is not marked by a serious phenomenon of racism, it is facing a disturbing trend of xenophobia and the development of manifestations of racism, primarily affecting the Sinti and Roma community, immigrants and asylum-seekers primarily of African origin but also from Eastern Europe, and the Muslim community.

59. These dynamics of racism and xenophobia are nourished by the legacy and strong impact on government policies and on public perceptions of the extreme right parties' racist political platforms. They are also fostered by media that make political use of and legitimize racism and xenophobia by exploiting the profound process of multiculturalism taking place in Italian society and its consequent identity crisis. Italy is still harvesting the consequences of the policies of the former Government coalition which allowed the extreme right-wing parties to implement their agendas and to adopt an anti-immigration discourse and a security approach towards immigration and asylum that is reflected in the Bossi-Fini Law. Nevertheless, the political instrumentalization of racism is not a phenomenon of the past. Extreme right-wing parties continue to promote at the national level and implement at the regional and local levels their xenophobic and racist platforms. Moreover, media, often driven by the post-11 September culture of fear, continue to incite racial and religious hatred under the guises of freedom of expression and the need to combat terrorism. These dynamics of racism and xenophobia are illustrated as well by the increase of racist manifestations and violent acts in football.

60. The xenophobic trend that has been observed is also to some extent a manifestation of the fear resulting from the identity crisis of Italian society and the challenge of multiculturalism, particularly regarding non-European migrants. The Italian national identity, historically constructed to promote the nation State, marked by the legacy of the fascist State and impregnated with ethnic and religious connotations, no longer corresponds to the profoundly multicultural dynamics of modern society. As in most European countries, the emerging multicultural identity is clashing with the established national identity. The racist and xenophobic platforms are thus articulated around the need to "defend the national identity" and "protect the national security".

61. Xenophobia and discrimination against Sinti, Roma, immigrants and asylum-seekers of non-European origin as well as the Muslim community are manifested in a variety of forms.

62. Firstly, these groups face institutionalized discrimination reflected in legislation and policies affecting or addressing them. For example:

- Roma and Sinti, unlike other minorities, have been excluded from past legislation recognizing linguistic minorities, nor were they recognized as a beneficiary group of the National Plan against Poverty and Social Exclusion. The legislator has failed as well to address their lack of identity documents and birth registration and the legal consequences of this, allowing the perpetuation of their statelessness. Regarding the migrant Roma community, immigration law has disregarded the double discrimination they face as migrants and Roma in their access to employment, the gateway to legal migration;

- Migrants continue to suffer from a security approach in immigration legislation that criminalizes them. The security approach of the Bossi-Fini Law exposes migrants, asylum-seekers and refugees to: harassment by law enforcement agents; administrative detention in centres during the deliberation of their status, which often exceeds the deadlines prescribed by the law; and the criminal punishment of one to five years' imprisonment for failing to obey an expulsion order or injunction to leave the country. In addition, in the view of the Special Rapporteur, the discourse of the authorities supporting a model of legal migration within quotas established on the basis of the needs of the labour market is challenged by the reality of an important number of migrants working in the illegal sector. Fundamental questions need to be raised in this context. Are the quotas wrongly established, or are the needs of the labour market incorrectly assessed? Are the lengthy and costly procedures an excessive burden for employers, who resort to hiring migrants illegally? Are the repressive norms in place pushing migrants into illegality? Is the current administrative detention envisaged for migrants and asylum-seekers in compliance with the human rights obligations of Italy? These and other questions will need to be answered by the Government in the revision of the immigration policy in place;
- Members of the Muslim faith, despite belonging to the second largest denomination, are the only religious groups with whom the State has not signed a bilateral agreement (*intese*).

63. Secondly, the Special Rapporteur noted a dramatic socio-economic marginalization of these groups, who face greater difficulties in the enjoyment of their rights to employment, adequate housing, education and health. These inequalities vis-à-vis the rest of Italian society need to be urgently addressed. The Special Rapporteur found particularly disturbing the poor housing and living conditions of Sinti and Roma; the slavery-like conditions of migrants in the agricultural sector; the exposure of migrant women to abusive working conditions as domestic workers and caregivers and their high representation in the prostitution and sexual exploitation sector.

64. Finally, racism, discrimination and xenophobia have a deep cultural dimension. There is a profound lack of knowledge and understanding about the culture and religion of national minorities and migrants, in particular about Islam and Roma and Sinti culture and value systems, which remain untaught or insufficiently incorporated in school curricula despite the long-standing presence of these groups in Italian territory. Additionally, asylum-seekers and refugees, particularly from Africa, are wrongly believed not to have relevant contributions to make from a cultural point of view despite the richness of their history, art, system of values, spirituality, language and culture. Fundamentally, the assimilation approach to integration and its dominant rhetoric of "acceptance of or adaptation to our values", which demands that migrants and asylum-seekers literally divest themselves of their cultural, religious and, if possible, ethnic specificity, is not only a rejection of cultural diversity but also the reproduction and recycling of the historical cultural prejudice against the uncivilized non-European. This posture, which reflects an ideological trend in the European construction that negates history as well as geography, promotes the European nature over the Mediterranean dimension of the national identity of the Italian society.

65. The Special Rapporteur noted the emergence of factors and positive trends to combat the dynamics of racism, discrimination and xenophobia within the Italian society reflected in a clear political will on the part of the Government, particularly at the central level, to combat racism, xenophobia and related intolerance. This political will is illustrated by legislative initiatives such as the draft citizenship law, the announced reforms of the immigration legislation and the strengthening of the repressive measures to combat racism and abuse towards migrants; the greater sensitivity towards multiculturalism being included in the education policies; the strengthening of a rights-based approach to immigration and asylum within the Government and its institutions; as well as the steps taken for the improvement of the living conditions and quality of the legal protection granted in the various centres where immigrants, asylum-seekers and refugees are detained.

VI. RECOMMENDATIONS

66. **Given the recent political legacy of racism and xenophobia, the Government needs to recognize the fight against racism, xenophobia and related discrimination as one of its first priorities and confirm at the highest level its determination to fight these phenomena. The Government has the responsibility to ensure that this struggle also takes place at the regional and local levels. It is particularly important to publicly and strongly express disapproval of and combat racist and xenophobic political platforms.**

67. **The Special Rapporteur welcomes the National Plan of Action on the Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. However, he recommends that the plan: be redefined to include a comprehensive programmatic strategy to address all aspects of racism in every sphere of life and including all groups concerned in compliance with the Durban Declaration and Programme of Action; be the result of a concerted effort by relevant actors, particularly civil society, the concerned communities and political parties; be formally endorsed by the Government as a thorough strategy to fight racism and discrimination; and be based on a comprehensive analysis of the Italian context with regard to racism and xenophobia.**

68. **The Special Rapporteur stresses the importance of further improving the implementation of the existing legislation combating racism and discrimination. The judiciary and law enforcement agencies require training in the existence and content of the law as well as adequate information on legal protection for the groups concerned.**

69. **The Government should consider the establishment by law of an independent national institution for the promotion and protection of human rights in accordance with the Paris Principles and for combating all forms of discrimination in a holistic manner, including all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. Pending the establishment of this institution, the Government should consider with urgency the need to increase the level of independence and the human as well as financial resources of the National Office for the Fight against Racial Discrimination.**

70. Given the increase in violence in sport, especially football, it is strongly recommended that Italy implement the FIFA guidelines with particular vigilance. The Government should also undertake a review of the regulations of the various federations to harmonize them with the provisions of article 2 of LD 286/98 in order to eliminate discrimination against legally resident non-EU children in sports.

71. The Government should continue to promote the adoption of the legislative reforms that have already been initiated, in particular the Law on Citizenship, the reform allowing migrants to denounce abuse and receive protection, as well as the restoration of more severe punishment for incitement to racial and religious hatred and related crimes. Regarding the citizenship law, it should consider eliminating the economic requirements for the naturalization and acquisition of citizenship and making the obtaining of citizenship by minors dependent on the legal and economic situation of their parents, which may be against the best interests of the child. The Government should ensure that the draft citizenship law does not discriminate against socio-economically vulnerable migrants, refugees, Roma and Sinti by impeding their eligibility to apply for and obtain citizenship on economic grounds, and that it solves the problem of a lack of identification documents traditionally affecting the Roma community, hampering their acquisition of Italian citizenship and their recognition as citizens.

72. The Government should adopt comprehensive legislation on the right to asylum, distinct from the one on immigration, ensuring that gender-related persecution is a ground for the grant of asylum. The Government has the obligation to ensure that the implementation of the immigration legislation does not lead to a violation of the principle of non-refoulement and that no asylum-seeker is sent back to his or her country of origin while awaiting the outcome of appeals.

73. The Government should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and harmonize its national legislation accordingly.

74. The Government should review and amend the Bossi-Fini Law on immigration to replace the security approach and the criminalization of migrants and guarantee the protection of the rights of migrants and their integration in society.

75. The Government should further improve the conditions of the CPTAs and the reception and identification centres to ensure that health care as well as appropriate housing and living conditions are provided. It is particularly important to improve the provision of legal information and counselling. The Government should allow the free and permanent presence of relevant international organizations, in particular UNHCR and the International Organization for Migration, and the access of specialized humanitarian NGOs, particularly in the fields of health and legal aid, to improve the quality of the services currently provided.

76. The Government should combat the exploitation and abuse of migrant workers, particularly in the agricultural sector, as well as their current segregation in the labour market. It should ensure that there is appropriate legislation in place to protect women migrants working as caregivers and domestic workers.

77. The Government, in line with the Palermo Protocol, has the obligation to ensure that migrant women are not forced into prostitution because of their socio-economic vulnerability.

78. The Government should ensure that there are sufficient resources at all levels of government, in particular locally, to assist and guarantee the rights of migrants, asylum-seekers and refugees as well as Roma and Sinti.

79. Italy should recognize the Roma and Sinti as national minorities, and protect and promote their language and culture. The Government should adopt a comprehensive national policy towards these communities, in particular to address their poor housing conditions, lack of documents, high dropouts of their children and their difficulties in accessing employment. Roma and Sinti should be among the priority beneficiary groups of social inclusion policies.

80. The Government should conclude bilateral agreements (*intese*) with those Islamic denominational organizations that have applied and fulfilled the requirements in accordance with the law.

81. The Government should adopt an ethical and cultural strategy guided by the promotion of mutual knowledge and interaction between the different communities. The combat against racism, xenophobia and discrimination should be linked to the long-term construction of multiculturalism by two fundamental elements: firstly, it should be recalled that Italy had traditionally been a country of migration and that Italian communities abroad have been successful in preserving their cultural identity and integrating in the countries of migration; secondly, owing to its history and geography, Italy has had profound human and cultural interactions with the Mediterranean countries. The interaction between the combat against racism, xenophobia and discrimination and the promotion of multiculturalism should lead to a process of constructing a new multicultural identity.

82. The long-term construction of an Italian multicultural identity should be reflected in Italian institutions and guide government policies and programmes, in particular in education, culture and information.

83. The Government could consider launching, with the participation of all media, a process of reflection on the role and responsibility of the media to combat racism, xenophobia and related intolerance and to foster the adoption of a code of conduct in that regard.
