

28 May 2009

Executive Secretary
Acting on behalf of the Secretary General of the Council of Europe
Secretariat of the European Social Charter
Council of Europe
F-67075 Strasbourg CEDEX
France

COLLECTIVE COMPLAINT:

The Centre on Housing Rights and Evictions
(COHRE)

against

The Italian Republic

Centre on Housing Rights and Evictions (COHRE)
83 rue de Montbrillant
1202 Geneva
Switzerland
tel: 41. 27. 734. 1028

TABLE OF CONTENTS

I. ADMISSIBILITY.....	4
1. Competence of COHRE, the Complainng Organisation	4
2. Application of the Revised European Social Charter and the Collective Complaint System to Italy	5
3. Application to the Roma, the Population at Issue	5
II. SUBSTANCE OF THE COMPLAINT.....	6
Article 31: The right to housing, read alone or in conjunction with Article E;.....	6
Article 16: The right of the family to social, legal and economic protection, read alone or in conjunction with Article E;.....	6
Article 19: The right of migrant workers and their families to protection and assistance, read alone or in conjunction with Article E;.....	6
Article 30: The right to protection against poverty and social exclusion, read alone or in conjunction with Article E.....	6
III. BACKGROUND.....	7
1. History of Discrimination and Social Exclusion.....	7
2. Recent So-called Security Measures and the Surge in Xenophobia and Violence Against Roma and Sinti	9
IV. ALLEGATIONS	16
1. Acts and Omissions by Italian Authorities Violate Italy’s Obligation Pursuant to the Charter’s Non-Discrimination Provisions, Explicitly Rendered Under Article E, Which Helps to Define State Party Obligations in the Context of Vulnerable Groups, Prohibits Justifying Regressive Measures by Racist and Discriminatory Reasoning, and Permeates Over the Charter’s Substantive Rights	16
2. Italy Violates Article 31, Read Alone or in Conjunction with Article E, Due to its Continuing Failure to Create and Implement an Appropriate National Framework, Regression in the Area of Housing, Perpetration of Forced Evictions and Continuing Lack of Assistance for Roma and Sinti	22
2.1 <i>Non-implementation of Article 31 – Failure to Implement an Appropriate National Framework</i>	22
2.2 <i>Article 31§1 – Deliberate Retrogressive Measures Aggravating the Lack of Adequate Housing</i>	25
2.3 <i>Article 31§2 - Failure to Protection Against or Remedy Violence, Forced Evictions and Destruction of Homes</i>	28
2.4 <i>Article 31§3 - Continuing Lack of Assistance for Roma and Sinti Wishing to Settle</i>	35
3. Italy Violates Article 16, Read Alone or in Conjunction with Article E, on account of its Deliberate Retrogression in Social, Legal and Economic Protections for Roma and Sinti Families	37
4. Italy Violates Article 19, Read Alone or in Conjunction With Article E, on account of its Failure to Provide Assistance or Protection in the Areas of Housing and Racist and Xenophobic Discourse and its Failure to Provide Proper Procedure or Legal Redress in Cases of Expulsion.....	38

<i>5.1 Poverty and Social Exclusion of Roma and Sinti</i>	41
<i>5.2 Lack of an Overall and Coordinated Approach</i>	43
<i>5.3 Exclusion from Legal Status and Social Advantages</i>	45
V. CONCLUSIONS	47

I. ADMISSIBILITY

1. Competence of COHRE, the Complaining Organisation

1. The Centre on Housing Rights and Evictions (COHRE), an international non-governmental organisation, is the leading international human rights organisation campaigning for the protection of housing rights and the prevention of forced evictions. COHRE's work includes advocacy, a training and education program and extensive research and publications activity. COHRE is registered in the Netherlands since 1994, and coordinates its global activities from its headquarters in Geneva, Switzerland. Additional information about COHRE is available on the internet at: www.cohre.org.

2. In bringing this Collective Complaint, COHRE is supported by its Italian partner organisation, OsservAzione, Centre for Action Research against Roma and Sinti Discrimination. OsservAzione is a non-governmental organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma and Sinti in Italy. OsservAzione has recently published two reports on the situation of Roma and Sinti in Italy: "Imperfect Citizenship" (2006) on the multiple forms of discrimination and exclusion that Roma and Sinti face in Italy, and "Political participation and media representation of Roma and Sinti", a report on the role of the 'Gypsy issue' and Romani participation to local elections. Further information about OsservAzione is available at: www.OsservAzione.org.

3. COHRE hereby submits this collective complaint to the Executive Secretary,¹ acting on behalf of the Secretary General of the Council of Europe, pursuant to the collective complaint mechanism established by the Council of Europe on 9 November 1995 with the purpose of ensuring the full realisation by all of social rights.²

4. Under Article 1 (b) of the Additional Protocol, the High Contracting Parties recognise the right of international non-governmental organizations holding consultative status to submit collective complaints.³ COHRE has consultative status with the Council of Europe, and is on the Governmental Committee list of international non-governmental organisations allowed to submit collective complaints.

5. Unlike bodies coming under Article 1(c) and Article 2(1) of the Additional Protocol, international non-governmental organisations entitled to submit complaints need not come within the jurisdiction of the High Contracting Party. COHRE is therefore entitled to bring a collective complaint against those countries having ratified the European Social Charter or Revised European Social Charter or both that have also agreed to be bound by the collective complaints mechanism, without prejudice to any other admissibility requirement.

¹ Pursuant to Rule 22, Part VIII, of the Rules of Procedure of the ECSR, entry into force 29 March 2004, replacing Rules 9 Sept. 1999.

² See Additional Protocol to the European Social Charter providing for a system of collective complaints, European Treat Series No. 158 (hereinafter "the Additional Protocol").

³ List of International Non-Governmental Organisations (INGOs) entitled to submit collective complaints, Council of Europe, Strasbourg, 11 July 2008.

2. Application of the Revised European Social Charter and the Collective Complaint System to Italy

6. The Italian Republic (Italy) is a State party to the 1996 Revised European Social Charter and to the Additional Protocol providing for a system of collective complaints.

7. Italy signed the European Social Charter on 18 October 1961 and ratified it on 22 October 1965. The European Social Charter entered into force with respect to Italy on 21 November 1965. Italy signed the Revised European Social Charter (Revised Charter) on 3 May 1996 and ratified it on 5 July 1999 with the exception of Article 25, which is not at issue in this Complaint.⁴ The Revised Charter entered into force with respect to Italy on 1 September 1999.

8. Italy signed the Additional Protocol of 1995 providing for a system of collective complaints on 9 November 1995 and ratified it on 3 November 1997. The Additional Protocol entered into force with respect to Italy on 1 July 1998.

3. Application to the Roma, the Population at Issue

9. An estimated 160,000 Roma reside in Italy,⁵ approximately 70,000 of whom hold Italian citizenship. Though the numbers are contested, it is estimated that more than half come from South Eastern Europe, the former Yugoslavia, Bulgaria or Romania.

10. The European Committee of Social Rights (ECSR or Committee) stated in *European Roma Rights Centre (ERRC) v. Italy*:

The Committee recalls that when it ruled on the admissibility of the case it did not examine this issue, which could only be properly assessed when examining the merits of the case. It notes that the parties do not question the fact that the groups covered by the complaint in fact include Italian citizens and nationals of parties to the Charter or the Revised Charter lawfully resident in Italy. It follows that the Italian Government's contention that it would be impossible "to separate the behaviours contested in a manner to apply the principle of Article 31 of the Charter only to those persons covered by the Charter itself" cannot prevent the Committee from exercising its authority to review the application of Article 31 of the Charter. Even assuming that, as the Government contends, it is impossible to distinguish among Roma to whom the protection afforded by Article 31 shall be compulsorily guaranteed and those Roma to whom, according to the Appendix (paragraph 1), the guarantee of such protection remains within the remit of States parties, the Committee does not see how such a circumstance would exempt the State from the obligation of ensuring that protection.⁶

⁴ Italy signed the RESC with the following declaration contained in a Note Verbale from the Permanent Representation, handed to the Secretary General at the time of deposit of the instrument of ratification, on 5 July 1999: "Italy does not consider itself bound by Article 25 (the right of workers to the protection of their claims in the event of the insolvency of their employer) of the Charter."

⁵ Organisation for the Security and Co-operation of Europe Office for Democratic Institutions and Human Rights (OSCE-UDIHR), *Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, Status Report 2008, Appendix V, page 63.

⁶ *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, ECSR Decision on the Merits, 7 Dec. 2005, para. 18 (emphasis added).

II. SUBSTANCE OF THE COMPLAINT

Articles of the Revised Charter at Issue in the present Collective Complaint:

Article 31: The right to housing, read alone or in conjunction with Article E;

Article 16: The right of the family to social, legal and economic protection, read alone or in conjunction with Article E;

Article 19: The right of migrant workers and their families to protection and assistance, read alone or in conjunction with Article E;

Article 30: The right to protection against poverty and social exclusion, read alone or in conjunction with Article E.

11. The present collective complaint alleges violations by Italy of Articles 16 and 31 of the Revised Charter, read alone or in conjunction with Article E, on grounds that recent so-called emergency security measures and heightened racist and xenophobic discourse have resulted in unlawful campaigns of evictions leading to homelessness and expulsions, disproportionately targeting Roma and Sinti. These violations are coupled with Italy's continuing failure to address the findings of the Committee in Collective Complaint No. 27/2004 and subsequent reporting.

12. Violations of Article 19, read alone or in conjunction with Article E, are additionally alleged on account of Italy's failure to provide migrant workers and their families with protections in the areas of expulsions and racist and xenophobic discourse; and due to Italy's failure to provide protections or assistance to migrant workers and their families in the areas of housing and legal redress.

13. Further, the present collective complaint alleges violation by Italy of Article 30 of the Revised Charter, read alone or in conjunction with Article E, on the basis of policies and practices of segregation of Roma and Sinti and the disparate denial of legal status and social benefits. Italy's failure to develop and implement a national strategy to address these issues and failure to protect Roma from poverty and social exclusion demonstrates Italy's non-compliance with its obligations under Article 30.

14. The Committee of Ministers in its 2006 Resolution on *European Roma Rights Centre v. Italy* stated that it:

Looks forward to Italy reporting, on the occasion of the submission of the next report concerning the relevant provisions of the Revised Charter, that the situation has improved, and keeping the Committee of Ministers regularly informed of all progress made.⁷

15. However, in the intervening two and a half years since the Committee of Ministers resolution, conditions have not improved, and have in fact worsened dramatically. For instance, Italian authorities, in conjunction with the media, have gleaned public support for so-called emergency security measures, pushing a campaign of massive and often violent forced eviction and expulsion of Roma and Sinti from Italy. In its most recent Third Report on Italy, the

⁷ *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, Committee of Ministers Resolution ResChs(2006)4, adopted 3 May 2006, para. 3.

European Commission Against Racism and Intolerance (ECRI) made particular notice of the failure of Italy to enforce existing anti-racism laws. It further noted Italy's failure to establish a national policy ensuring the right to adequate housing. Following Italy's April 2008 elections, European Parliament member Viktoria Mohacsi toured Roma camps in Rome and Naples on 17 and 18 May 2008, and declared that conditions were the worst that she had seen in Europe⁸ and expressed "a need for an urgent intervention program, especially for the people arriving from the new EU Member States."⁹

16. Multiple Council of Europe entities have monitored the situation and issued reports discussed herein. These reports include: the Commissioner for Human Rights of the Council of Europe Thomas Hammarberg's (Commissioner Hammarberg) Memorandum (Hammarberg Memorandum) following his visit to Italy on 19-20 of June 2008;¹⁰ Resolution ResCMN(2006)5 "on the implementation of the Framework Convention for the Protection of National Minorities by Italy" by the Council of Europe Committee of Ministers;¹¹ the ECSR 2007 Conclusions (Italy) on Articles 30 and 31;¹² and the ECRI monitoring report on Italy, CRI(2006)19.¹³

17. Additionally, multiple international human rights organisations, including organisations expert in the field of Roma and Sinti issues, have assessed the situation in Italy as cause for alarm. Systematic abuses of the fundamental rights of Roma and Sinti in Italy have been documented by independent field missions undertaken by non-governmental organisations including the Open Society Institute, the Centre on Housing Rights and Evictions (COHRE), the European Roma Rights Centre (ERRC), Romani CRISS and the Roma Civic Alliance in Romania. These fact-finding missions are also discussed herein.

III. BACKGROUND

1. History of Discrimination and Social Exclusion

18. As noted, an estimated 160,000 Roma and Sinti reside in Italy today, approximately 70,000 of whom are Italian citizens. Roma have lived in Italy for centuries, and they have suffered discrimination for nearly as long.¹⁴ As a result of racial or ethnic prejudice, popular lore in Italy

⁸ *Rome v. Roma, Silvio Berlusconi's new government acts against immigrants to Italy*, The Economist Print Edition, 22 May 2008, found at http://www.economist.com/world/europe/displaystory.cfm?story_id=11412932. See also, EveryOne Group, *Racism and the Roma: EU Inspection Entrusted to the Euro MP Viktoria Mohacsi*, 20 May 2008, found at http://www.everyonegroup.com/EveryOne/MainPage/Entries/2008/5/20_Racism_and_the_Roma_EU_inspecti_on_entrusted_to_the_Euro_MP_Viktoria_Mohacsi.html.

⁹ EveryOne Group, *Racism and the Roma: EU Inspection Entrusted to the Euro MP Viktoria Mohacsi*, supra, 20 May 2008.

¹⁰ Hammarberg Memorandum, CommDH(2008)18.

¹¹ Resolution ResCMN(2006)5 "on the implementation of the Framework Convention for the Protection of National Minorities by Italy" by the Council of Europe Committee of Ministers, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies.

¹² Dec. 2007.

¹³ Adopted 16 Dec. 2005, made public 16 May 2006.

¹⁴ "Roma in Italy: Racial Segregation," ERRC Country Reports Series, issue No. 9/2000 page 13 (noting that records of Roma in Italy date back to the early 1400s, and noting persecution of Roma in 1500); available at <http://www.google.com/url?sa=t&source=web&ct=res&cd=10&url=http%3A%2F%2Fwww.ceeol.com%2Faspx%2Fgetdocument.aspx%3Flogid%3D5%26id%3DF91D04A8-F604-498A-AFA1->

has frequently associated Roma with disease, crime, delinquency and other social ills. For example (to name only one), cholera has been referred to as “Lo Zingaro” (the Gypsy).¹⁵ In the early 20th century, Roma were characterised by Italian anthropologists, psychiatrists and judges as ‘lazy thieves’,¹⁶ and this characterisation was reiterated by anthropologists as recently as 2000 in a publication by the Italian government.¹⁷ These prejudices have resulted in the serial exclusion of Roma for generations if not centuries.

19. Since the 1980’s, Italy has seen an increase in immigration from Southeastern Europe, the former Yugoslavia, Bulgaria and Romania. This migratory trend owes in large part to ethnic cleansing during the conflicts following the break-up of Yugoslavia and, more recently, to the accession of Romania and Bulgaria to the European Union (EU), bringing an increasing number of persons exercising their right to freedom of movement within the EU. The Italian press responded to this immigration by writing a number of inflammatory, xenophobic articles.¹⁸ Likewise, the Italian government has undertaken policies aggravating violence and social exclusion of immigrants rather than addressing the issue in compliance with international and regional obligations, including those under the Revised Charter. For example, as pointed out by Claudio Graziano of the Italian association of social promotion, ARCI,¹⁹ rather than mandating its Minister of Welfare to deal with the situation, Italy mandated its Minister of the Interior and its Prefects.

20. Today, Roma and Sinti suffer the effects of social exclusion in almost all areas of life – including housing, education, healthcare, employment, and the ability to obtain legal protections and legal status. At the heart of this exclusion is constant displacement and segregation, justified in part by the characterisation of Roma as “nomads”. These characterisations have fueled and justified the proliferation of segregationist laws and policies against Roma; in the late 1980s and early 1990s, ten out of the twenty regions in Italy had adopted laws aimed at the “protection of nomadic cultures” through the construction of segregated camps. Indeed, in Italy the word “nomad” is used interchangeably for Roma and Sinti persons.

21. These laws rendered official the misperception that all Roma are “nomads” who prefer to live in camps isolated from Italian society. The result has been relegation to segregated camps of extremely substandard conditions and officially sanctioned ghetto communities.

22. Italy’s 2006 Fifteenth Periodic Report of States Parties to the International Convention on the Elimination of Racial Discrimination (monitored by the Committee on the Elimination of Racial Discrimination (CERD)) offers one example of the erroneous and racist justification behind these policies. The 2006 Fifteenth Periodic Report states:

As regards the remaining Roma populations -- characterized in all cases by nomadism, they already enjoy the right to freedom of movement and circulation while, if composed from citizens of the European Union, they are under the rules regulating the stay of foreigners, if composed from non

17B605355F80&ei=a8xkSaPoK4b00AW8qY3OCA&usq=AFQjCNF9TC582C7S8QOv6ksWDK8Of2jQKQ&sig2=61RUIOA2cdyzqNYKhqHdg, 7 Jan. 2009.

¹⁵ Ibid.

¹⁶ Ibid at 14.

¹⁷ “An Outbreak of Anthropology in Italy: A New Government Publication Describes Roma as ‘Gatherers,’” Piero Colacicchi, available at <http://www.errc.org/cikk.php?cikk=748&archiv=1>, 7 Jan. 2009.

¹⁸ “Roma in Italy: Racial Segregation,” ERRC Country Reports Series, issue No. 9/2000 page 16.

¹⁹ Committee on Civil Liberties, Justice and Home Affairs (LIBE), Draft Report on the LIBE delegation to Italy on 18/19 September, “nomad camp emergency”, by Rapporteur Gerard Deprez, to the of the European Parliament, (LIBE Report) 2008, page 10.

EU citizens.²⁰

23. This problem of racism and xenophobia in Italian political discourse has been repeatedly commented upon and addressed as an issue requiring positive remedial action. ECRI, in its most recent Third Report on Italy issued comments regarding Italy's failure to improve the situation of segregation of Roma:

In its second report, ECRI noted that the Italian authorities tended to approach all issues relating to Roma and Sinti from the assumption that the members of these groups live a nomadic lifestyle. ECRI considered that it was particularly urgent to change such an approach, since it had resulted, notably, in the forcible relegation of many Roma and Sinti into camps for nomads. Civil society organisations have reported to ECRI that Roma and Sinti are still considered as nomadic populations in official policy, especially at national level. However, ECRI also notes that some progress has been made in a few regions, where, in collaboration with the communities concerned, local authorities have started to partially eliminate camps, as suggested by ECRI in its second report. By and large, however, the situation remains the same as described in ECRI's second report, with approximately one third of Roma and Sinti, both citizens and non-citizens, living in conditions of practical segregation from the rest of society in camps for nomads, in many cases without access to the most basic facilities.²¹

24. Similarly, Commissioner Hammarberg's Memorandum commented that in Italy, the idea that Roma are nomads who prefer to live in camps is "widely, and erroneously held."²²

25. Such erroneous characterisations, especially in the area of housing, prevent Roma from accessing social benefits, which in turn aggravates their social exclusion. For example, persons born to immigrant Roma or non-Roma parents within Italian territory lose resident permits granted by their parents' passports at age of 18. Due to the fact of their birth on Italian soil, such persons are frequently denied formal recognition by their parents' country of origin. With respect to the potential for gaining Italian legal status, living in segregated camps fails to provide an "official domicile," making it impossible to comply with the Italian law on citizenship requiring a documented domicile from birth to age 18. Such misperceptions and practices place many Roma in Italy in a vicious cycle of "statelessness."

26. Because persons born in these segregated camps lack the means to obtain residency and citizenship, they are ineligible for standard state-provided social assistance and are incapacitated in the area of legal protection. As would be imagined, the result is also a lack of civic and political participation, placing Roma in a position of grave social vulnerability.

2. Recent So-called Security Measures and the Surge in Xenophobia and Violence Against Roma and Sinti

27. In 2006, the ECRI Third Report on Italy noted that not only had Italy failed to enforce existing anti-racism laws, as recommended by its previous report, but that such laws had been

²⁰ The ten regions in question included Veneto, Lazio, Autonomous Province of Trento, Sardinia, Friuli-Venezia Giulia, Emilia-Romagna, Tuscany, Lombardy, Liguria and Piedmont. Fifteenth Periodic Report of State Parties to the International Convention on the Elimination of Racial Discrimination (Italy), CERD/C/ITA/15, 29 Mar. 2006, para. 172.

²¹ ECRI monitoring report on Italy, CRI(2006)19, adopted 16 Dec. 2005, made public 16 May 2006, para. 95 (emphasis added).

²² Hammarberg Memorandum, CommDH(2008)18, para. 31.

made more lenient.²³ The ECRI Third Report also noted, “the use of racist and xenophobic discourse in politics has intensified and targeted in particular non-EU citizens, Roma, Sinti and Muslims. Members of these groups have continued to experience prejudice and discrimination across a wide range of areas.”²⁴ The ECRI Third Report made particular note of the Northern League’s (a conservative political party) use of xenophobic political rhetoric against, among others, non-citizen Roma as responsible for a degeneration of national security.²⁵ The report expressed its concern with the coalition of political officials’ increasing discordance with human rights standards, and noted the hostile reaction, even among high-level politicians, following the issuance of its Second Report and its statements about the Northern League.²⁶

28. Incidents of violence against non-citizen Roma heightened severely following Italy’s April 2008 election and the formation on 8 May 2008 of the new right-wing national government. Additionally, the success of the extreme right in local elections in a number of municipalities, including Rome, has brought with it an increase in violence against Roma.²⁷

29. The Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE-ODIHR), noted in its 2008 Status Report the willingness of governments to be influenced by sensationalist media coverage of Roma:

There is much evidence that it is easy to perpetuate and exploit negative representations of Roma and Sinti in the media, with such reporting often going unchallenged. Examples of this type of reporting include disproportionate reactions in the media to Roma and Sinti migration or single acts of violence by Roma and Sinti individuals. It also indicates that there is a willing audience in the rest of society for such media reactions. There is evidence of negative trends in some states, where far from working against negative and stereotyped media portrayals of Roma and Sinti, governments actually appear to be influenced by negative media coverage of Roma and Sinti.²⁸

30. This, combined with years of anti-Roma and Sinti propaganda by the Italian media, which has unceasingly portrayed Roma as vagrants and criminals, has recently culminated in exceptional levels of discrimination and human rights violations, rationalised under the aegis of national security. Under laws targeting nomads, Romani camps have been destroyed and their residents evicted by the police and/or other representatives of the public authority, often without notice and without the option of alternative shelter. Other camps in various regions throughout Italy have been targets of arson or vandalism based on racial hatred. The perpetrators of these crimes are rarely prosecuted or even investigated by authorities.²⁹

²³ ECRI Third Report on Italy, CRI(2006)19, para. 12.

²⁴ Ibid, Executive Summary, page 6.

²⁵ Ibid, para. 86.

²⁶ Ibid, paras. 12 and 89.

²⁷ Though security measures against Roma and Sinti had begun in Italy prior to the April 2008 general elections, these elections saw a further increase in violence and racist discourse. The right-wing conservative party Forza Italia won the April 2008 general elections, headed by Silvio Berlusconi, whose coalition partners include the anti-immigrant Northern League and the right-wing National Alliance party. The new government was constituted in May 2008. The National Alliance holds four top seats of the new Cabinet including Umberto Bossi, head of the Northern League, and control of the Ministry of Interior, headed by Mr Roberto Maroni. The National Alliance party is lead by Gianfranco Fini, who is also speaker of the lower chamber of parliament. Mr Fini has a record of public anti-Romani speech.

²⁸ OSCE-ODIHR 2008 Status Report, page 27 (emphasis added).

²⁹ *Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy* (Coalition Report) July 2008. The Coalition includes the ERRC, the Roma Center for Social Intervention and Studies (RomaniCRISS), Roma Civic Alliance (RCR), COHRE, and the Open Society Institute (OSI), as well as OsservAzione, Community of Sant’Egidio, Sucar Drom, Piero Colacicchi, Dijana Pavlovic, Eva Rizzin, and Marco Brazzoduro. The Report documents interviews taken in late May of 2008 from interviews with approximately 100 Romani individuals living in formal and informal Romani camps in Rome, Naples, Florence, Brescia, Milan and Torino. In Naples

Pacts for Security

31. Recent so-called security measures are seemingly entirely based on isolated and sensationalised media coverage of individual criminal allegations. Lacking verified or comprehensive information, fourteen Italian cities currently have adopted “Pacts for Security” condoning raids on camps as justified in the interest of national security. Signed by state and local authorities, the first such Pact, issued in November 2006, was in Naples. Others subsequently followed in Rome, Milan, Firenze, Torino, Genova, Bologna, Catania, Bari, Cagliari, Venezia, Modena, Prato and Trieste.

32. These Pacts follow the model of delegating increased authority to local police. For example, within three months of signing the Milan Pact, the responsible authorities were to “define a strategy in which extraordinary power will be given to the Prefect to implement the strategic plan for solving the Roma emergency in Milan.”³⁰ According to the Rome Pact, commencing the week of 23 May 2007, a joint commission of the regional government was instructed to identify locations for four “villages of solidarity” on the periphery of Rome for inhabitation by 4,000 Roma (while 15,000 Roma are reported to be affected in Rome).³¹

33. These regressive legislative measures were developed and implemented in direct contravention of principles of non-discrimination. COHRE monitoring of Romanian media during the period June 2007-January 2008 indicated that the vast majority of persons expelled to Romania were Romani.³² On 21 August, the Italian national news agency ANSA reported that the Milan Prefect announced in a communiqué that, “a proposal would soon be passed to give him power to control the presence of Roma in the city.”³³ The Pact also foresaw the “intensification of controls” on the periphery (where many Roma live) to guarantee the security of Milan residents.³⁴

34. As Commissioner Hammarberg stated in his Memorandum following his visit to Italy, legislation adopted quickly and singling out Roma and Sinti as targets for security concerns does indeed have the effect of conflating foreigners with offenders.³⁵ Further, it serves to legitimise racist and xenophobic actions against Roma and Sinti, masking an agenda of violence and segregation under the aegis of security concerns.

35. In addition, COHRE field research in November 2007 revealed that non-Romani Romanians had little fear of being detained or expelled by police, because, in the words of T.L. an ethnic Romanian interviewed by COHRE in Torino, “everyone knows that it is only Gypsies

(Secondiliano, Centro Lima, Scampia, Ponticelli, Santa Maria and Torre Annunziata Nord), Rome (Salviati, River, Casilino 900, Martora, Cave di Piatralata, and an un-named camp close to Cave di Piatralata), Milan (Via Tribugnano, Corsico settlement and the Bacula settlement) and Brescia (Nomad Camp of Brescia for Sinti Italians) and Torino (Via Germagnano and Lungo Stura Lazio).

³⁰ See ERRC and OsservAzione joint letter re: Forced eviction of more than 10,000 Roma Announced in Italy, 23 May 2007.

³¹ Written Comments of the ERRC, COHRE, OsservAzione and Sugar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 11.

³² Ibid, page 5.

³³ Ibid, page 11.

³⁴ See ERRC and OsservAzione joint letter re: Forced eviction of more than 10,000 Roma Announced in Italy, 23 May 2007.

³⁵ Hammarberg Memorandum, para 14.

who are being expelled.”³⁶

36. Following the enactment of the pact in Rome, it is predicted that 10,000 Roma will be forcibly evicted from their homes.³⁷ Rome undertook to establish “villages of solidarity” along its periphery allowing 4,000 Roma to settle, but made no provisions for the remaining approximately 10,000 actually residing in Italy.³⁸ One alarming article published on 19 May 2007 by the Italian national newspaper La Repubblica was entitled: “Prefect Serra: Those who live in the squatter settlements must go. Police to control order in the camps. And in the capital, order increases: Away with 10,000 unregistered Roma”.³⁹ This article quotes explicitly racist remarks by Prefect Serra, criminalising Roma and referring to Roma as “nomads”:

[A]t ten o'clock in the morning I saw children, dirty, playing with a ball . . . The women were not around because they are at the metro stealing purses and the men were sleeping because perhaps they worked all night robbing apartments.

37. Following establishment of the Rome task force, Prefect Mr. Serra was quoted as having stated that the task force would systematically patrol the existing camps, “encouraging the Nomads to leave. If they return, the police officers will remove them again and this will continue until they understand that they must go somewhere else.” According to La Repubblica, Mr. Serra planned that by the time the “villages of solidarity” were completed, 10,000 Roma would have been removed from the centre of the city and the task force would shift their responsibilities to “preventing the villages from becoming a centre of car theft, weapons, drugs, and prostitution.”

State of Emergency Decrees

38. Italy has issued a series of emergency Decrees that raise international concern. As with the Pacts, these Decrees also seem entirely based on isolated and sensationalized media coverage of individual criminal allegations. While no Decree has yet been adopted into law, each Decree has nonetheless brought about extensive injury and regression while in place. Additionally, each has been replaced at its expiration with another emergency Decree of essentially the same content but employing increasingly alarming language.

39. These so-called emergency security Decrees have ostensibly justified systematic forced evictions and expulsion of Roma, doing so via dramatic expansion of police powers. For example, the Decree “Declaration of the state of emergency in relation to the settlements of the nomad communities in Campagna, Lazio and Lombardia” authorized the police to establish and implement a strategy for addressing the situation of Roma. The Decree grants the Prefect of Rome powers to:

- 1.) Monitor and authorize settlements;
- 2.) carry out censuses of the person living therein;
- 3.) adopt measures against convicts that may live therein;
- 4.) adopt measures of eviction;
- 5.) identify new areas where adequate settlements may be built; and

³⁶ Written Comments of the ERRC, COHRE, OsservAzione and Sugar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 12.

³⁷ See “Pact for Security in Rome” and “Pact for Security in Milan” making clear that the actions sanctioned therein target individuals considered inherently alien to each city.

³⁸ Written Comments of the ERRC, COHRE, OsservAzione and Sugar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 11.

³⁹ Ibid.

6.) adopt measures aimed at social cohesion, including schooling.⁴⁰

40. Following a wave of highly sensationalised media coverage of individual criminal allegations, on 1 November 2007, the Italian government enacted Legislative Decree 181/07 “Urgent rules in matters of removal from the national territory for reasons of public safety” (Disposizioni urgenti in materia di allontanamento dal territorio nazionale per esigenze di pubblica sicurezza), attempting to alter European Directive 2004/38/EC regarding free movement among EU member states.⁴¹ This Decree, though ultimately not converted into Italian law by the Italian Parliament within the necessary 60 days, resulted in immediate and wide-scale persecution and eviction of Roma.

41. Decree No. 249 on “Urgent measures in matters of expulsions and removal for terrorism and for imperative reasons of public safety” (Misure urgenti in materia di espulsioni e di allontanamenti per terrorismo e per motivi imperativi di pubblica sicurezza) of 29 December 2007, which replaced the Decree 181, employed paralleled content but used heightened language. For example, “removal” became “removal and expulsion” and the reason of public safety became “terrorism and imperative reasons of public safety.”⁴² The replacement Decree No. 249 elides immigration with international terrorism and other extreme threats to public safety.

42. With respect to the alterations the emergency Decrees essentially render to European Directive 2004/38/EC null. The Amnesty International 2008 report on Italy states:

On 2 November, an urgent Decree Law came into force which made it possible for the Italian authorities to expel European Union (EU) citizens based on concerns for public security. The Decree Law did not comply with EU Directive 2004/38/EC and seemed to be directed at Romanian citizens of Romani origin as a reaction to the suspected murder in Rome of an Italian woman by a man described as a Roma from Romania. Within two weeks after the Decree Law came into force 177 persons had been expelled.⁴³

43. In Commissioner Hammarberg’s Memorandum, he expressed his concern over the expansion of the power of the Prefect resulting from the recent so-called security measures. Commissioner Hammarberg further identified such trends as “indicative of a serious weakness of the state mechanism that appears to be unable to deal effectively with social problems that are not novel by means of ordinary legislative measures.”⁴⁴ He noted in particular the threat posed to Roma social and housing rights, and stated that the provision of increased powers to police these communities “may not be the best available option.”⁴⁵

44. Accompanying this wave of so-called emergency security measures has been a campaign of census-taking targeting Roma camps. These census campaigns have enabled targeted, unlawful evictions and expulsion of Roma and Sinti.

Violent Attacks by State and non-State Actors in the Public Sphere

⁴⁰ Hammarberg Memorandum, CommDH, para. 28.

⁴¹ Italy’s Decree No. 30 of 6 February 2007 transposes EC Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States.

⁴² Decree No. 249 of 29 Dec. 2007 published in the official State Gazette on 2 Jan. 2008.

⁴³ “2008 Annual Report for Italy”, Amnesty International USA website, <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2008&c=ITA> (emphasis added).

⁴⁴ CommDH(2008)18, para. 68.

⁴⁵ Ibid, para. 44.

45. Reports conducted by a coalition of international human rights organisations detail an alarming situation of degenerating security for Roma in Italy in both the public and private spheres.⁴⁶ The current situation has rendered many Roma and Sinti afraid to leave their homes or camps due to reasonable fear of public attack; at the same time their homes and camps themselves are increasingly subject to violent attack and illegal raids by both Italian authorities and third party perpetrators.

46. Interviews conducted in Italy between 23 and 30 May 2008 with approximately 100 Romani individuals living in formal and informal Romani camps report abuse in the public sphere such as verbal attacks and racist slurs often accompanied by violent assault, as well as physical violence and verbal harassment on the part of police.

47. As reported by the May 2008 Coalition, one Romanian Romani man who had been living in Italy for 3 years, with whom the Coalition spoke, reported that police officers had severely beaten him the night before. The interviewee stated:

Last night I was begging in a district in the outskirts of Rome. Police came and took me to the police station. I showed them my Romanian passport, but they claimed that my passport is a fake and that I should be from Morocco. They took my money and told me not to go back there again to beg. Then they started beating me, they kicked me and slapped me. The beating went on for 15-20 minutes.⁴⁷

48. Roma from the Torre Annunziata Nord camp in Naples also stated that they felt very unsafe in public due to the aggressive and violent physical and verbal attacks of Italians. The report stated that many Roma still living in Naples testified to experiencing a high level of insecurity while in the city, and that even children and teenagers are involved in such verbal abuses.⁴⁸ One Romani woman living in a semi-formal camp in Rome told members of the Coalition, “We never go to the city centre... We are always very cautious when we leave the camp. I have never been downtown.”⁴⁹

49. Such violence is so widespread that it impairs the ability to earn a living due to reasonable fear of going into public. The Coalition report states that Roma individuals who engaged in informal economic activities, such as washing car windshields at traffic lights or begging, reported being targeted by police for violence and abuse in recent months.⁵⁰ Further:

Residents of an informal camp close to Cave di Piatralata informed the Coalition that in early May 2008, a 20-year-old man from the same camp was cleaning car windshields at a traffic light when several police officers grabbed him and took him to a police station. There, police officers reportedly severely beat the young man. After the incident, the young man was very scared and left Italy with his family and returned to Romania.⁵¹

Violent Attacks by State and non-State Actors in the Domestic Sphere

50. Furthermore, Roma are not safe within their homes. The May 2008 Coalition Report notes

⁴⁶ See Coalition Report, *Security a la Italiana*, supra note 33.

⁴⁷ Ibid, interview with a Romanian Romani man, informal Romani camp in Rome, 29 May 2008, page 23.

⁴⁸ Ibid, interviews with Romani residents of Naples' Camp Torre Annunziata Nord, 27 May 2008, page 31.

⁴⁹ Ibid, interview with Montenegrin Romani woman, Rome's Camp Casilino 900, 28 May 2008, page 31.

⁵⁰ Ibid, page 23.

⁵¹ Ibid, interview with Romani residents of an informal camp near Cave de Piatralata, Rome, 29 May 2008, page 24.

the degenerating level of security of Roma camps and the complicity of the Italian authorities:

In the period since February 2008, non-Romani Italians have perpetrated several highly publicised extremely violent attacks on Romani camps around Italy. In recent times, including in the instances referenced in this report, extremist attacks against Romani camps have taken on exceptionally violent tones, often including the use of Molotov cocktails which the perpetrators throw at Romani homes, and are conducted against a backdrop of hate speech against Roma. Police response to such events is abysmal, with little to no investigation taking place and not a single perpetrator detained or arrested in connection with the violent attacks.⁵²

51. In Milan:

On 11 May 2008, Milan's Via Navona Romani camp was burned to the ground by an unknown number of assailants who threw Molotov cocktails into the camp. As a result, the Romani inhabitants, including women and children, were left homeless, with their personal possessions destroyed.⁵³

52. On June 9 in Sicily, Roma camps were also forcibly evicted by violence and setting fire to Roma homes.⁵⁴

53. Not surprisingly, most Roma interviewed reported being afraid that they will become victims of violent attacks, including arson attacks and the burning of their homes.⁵⁵

54. In the midst of such an extreme level of persecution, Roma are not afforded the protection of the law. The police fail to prevent attacks and themselves perpetrate such attacks. Coalition researchers were "struck by the seemingly endless list of derogatory statements" and verbal abuse issuing from Italian police officers. The most common derogatory statements included: "Dirty Gypsies!", "Zingari del Cazzo! "Zingari di Merda! (Gypsies of Shit)", "Sei un pezzo di merda! (You are a piece of shit)", "You stink!", "You live like rats!" Most non-Italian Roma who testified to the Coalition stated that police persistently tell them to "Go back to your own country!"⁵⁶

55. The Coalition also documents a Romani man from the former Yugoslavia, living in Rome's Camp Salviati who reported that, "[p]olice brutality has increased in the last months. [The] [c]limate has changed. Police feel more at ease to be more violent [...]."⁵⁷ In Rome, the Romani leader of the semi-formal Camp Casilino 900 told members of the Coalition that the police "treat us [Roma] as if we are animals."⁵⁸

⁵² Ibid, page 29 (emphasis added).

⁵³ Ibid.

⁵⁴ Ibid, page 30, reporting that a settlement of approximately 100 Romanian Roma in Catania, Sicily, was attacked and burned to the ground by unknown perpetrators.

⁵⁵ Ibid, page 30.

⁵⁶ Ibid, page 27.

⁵⁷ Ibid, interview with a Romani man from the former Yugoslavia. Rome's Camp Salviati, 28 May 2008, page 24.

⁵⁸ Ibid, interview with the Romani leader of Camp Casilino 900, Rome, 28 May 2008, page 27.

IV. ALLEGATIONS

1. Acts and Omissions by Italian Authorities Violate Italy's Obligation Pursuant to the Charter's Non-Discrimination Provisions, Explicitly Rendered Under Article E, Which Helps to Define State Party Obligations in the Context of Vulnerable Groups, Prohibits Justifying Regressive Measures by Racist and Discriminatory Reasoning, and Permeates Over the Charter's Substantive Rights

56. Article E provides:

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

57. The Italian Republic is in flagrant violation of the Charter's equality guarantees, as evidenced by its: neglect in implementing recommendations to combat discrimination given by both ECRI and Commissioner Hammerberg; relaxation of anti-discrimination laws; failure to provide Roma and Sinti suffering violence with legal remedies; implementation of racist regional Security Pacts; disregard for requests for aggregated data on Roma and their housing needs; illegal police checks; and general failure to combat the discrimination suffered by Roma and Sinti. These violations, coupled with the Italian Republic's disregard of prior findings and recommendations by the European Committee on Social Rights and the Committee of Ministers of the Council of Europe, raise serious doubts as to Italy's commitment to uphold its Charter obligations under Article E and other relevant articles of the Revised Charter.

58. According to Article E of the Revised Charter, Charter rights shall be enjoyed without discrimination. With respect to Roma in Italy, the rights of the Charter are neither enjoyed in law nor in practice. By failing to take positive measures to address segregation and exclusion, Italian authorities have allowed for a situation of dangerous vulnerability and marginalisation. This vulnerability and marginalisation have paved the way for such regressive measures as the recent pacts for security and state of emergency decrees. The raids and expulsions authorized under the so-called emergency security measures take advantage of the historical exclusion and segregation, resulting in violent attacks, destruction of housing, and in some cases murder. In many cases these violations doubly render victims outside of the protections law and the Charter by destroying evidence and the opportunity for legal status.⁵⁹

59. Italy has failed to implement the many recommendations given to address discrimination and has simultaneously taken retrogressive measures. The ECRI Third Report on Italy called for measures to address the lack of legal remedy afforded to Roma in the face of violations of their rights.⁶⁰ ECRI recommended first that Italy implement and enforce existing anti-discrimination policy; take measures to address the implementation and enforcement of existing criminal legislation against incitement of racial hatred and violence and racially-motivated offences; and consider racial motivation as an aggravating circumstance of an offence.⁶¹

⁵⁹ See herein lack of legal remedy, para. 4; police racism, paras. 58, 59; Roma as nomads, paras 17-24.

⁶⁰ ECRI Third Report (Italy), paras. 13, 14, 18, 19.

⁶¹ Ibid.

60. With respect to proper transposing and drafting of anti-discrimination legislation, Commissioner Hammarberg's Memorandum states:

An issue that should be examined by the authorities, as a matter of priority, is the reinforcement of the domestic antidiscrimination law and practice, in particular in relation to the transposition in 2003 into domestic law of the two major anti-discrimination EC Directives 2000/43 (Racial Equality Directive) and 2000/78 (Employment Framework Directive).⁶²

61. Further, the Commissioner's Memorandum states:

One of the major reasons for this may well be that the above Decrees did not abolish earlier antidiscrimination legislation or incorporate it into the new one. The legislative outcome seems to be very complex acting to the detriment of an effective application of the new legislation.⁶³

62. The Commissioner's Memorandum gives the example of the lack of an explicit standard for the shifting of the burden of proof in discrimination cases. In Italy, the law required that a complainant hold the burden of production to establish "serious, exact and consistent elements" of discrimination, reviewed by the judge on the basis of "prudent appreciation" of presumptions. Italy transposed European Council Directive 2000/43, implementing the principle of equal treatment between persons irrespective of racial or ethnic background, with only a reference to burden of proof contained in its own civil code, leaving ineffective the Directive's provisions for "reversal of the burden of proof".⁶⁴ Italy's failure to properly transpose European Council Directive 2000/43 is indicative of its parallel failures to incorporate and apply not only EU law, but also Charter law.

63. Italy has not only failed to implement suggestions for improvement, but has also taken deliberate retrogressive steps. Recent discrimination legislation has actually reduced penalties for racist propaganda from a maximum sentence of three years' imprisonment to either a fine of 6,000 euros or a year and a half imprisonment. Commissioner Hammarberg reported the following:

The Commissioner also notes with concern that in February 2006 anti-racism legislation was modified by Law 85/2006 which seriously reduced the sentences provided for in cases of 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.⁶⁵

64. Also disturbing is the lack of legal remedy afforded to Roma or Sinti who have been victimized by the direct actions of Italian authorities. Many reports have documented not only a failure of the police to protect Roma and Sinti from violence, but that the police in fact have participated in such violence against Roma and Sinti. Further, no remedy for such violations has been provided. Commissioner Hammarberg reported that, "no information is as yet available on the conclusion of any effective investigation in to such incidents by the competent authorities."⁶⁶

65. Commissioner Hammarberg pointed out in his report that the Italian body established to combat racism, the National Office Against Racism (UNAR), lacks an effective enforcement mechanism. For instance, UNAR, though able to mediate and assist victims of discrimination,

⁶² Hammarberg Memorandum, CommDH(2008)18, para 16.

⁶³ Ibid, para. 17(a).

⁶⁴ Written Comments of the ERRC, COHRE, OsservAzione and Sucar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 9.

⁶⁵ Hammarberg Memorandum, CommDH(2008)18, para 18.

⁶⁶ Ibid, para. 32.

lacks standing of its own to bring cases. Further, and deeply troubling in light of recent developments, the Memorandum pointed out that until 2007, not a single case had been brought in a domestic court backed by UNAR assistance.⁶⁷

66. The situation of racism and discrimination against Roma and Sinti in Italy and the need for legal remedy has been well documented and commented upon, including by Council of Europe entities such as the Committee of Ministers, ECRI and the ECSR.

67. In its 2006 Resolutions on the Framework Convention for the Protection of National Minorities (hereinafter “Framework Convention”), the Committee of Ministers stated:

Initiatives to tackle discrimination and negative stereotypes in the media must be stepped up as these problems continue to affect certain minority groups. Participation of representatives of minorities could be further strengthened through the setting up of a specific structure to improve the institutional dialogue with the authorities. It is noted in this regard that the authorities are currently studying the possibility of establishing a Permanent Conference of Minorities, which would have an advisory capacity and would also include representatives of the Roma, Sinti and Travellers.⁶⁸

68. The ECRI, in its 2006 Third Report on Italy, recommended that Italy take measures to address racist and xenophobic discourse in politics; reiterated the importance of Italy’s portrayal of immigrants as contributors, and rather than threats to, Italy;⁶⁹ recommended that Italy engage in a dialogue and impress upon media the importance of not creating an environment of hostility and rejection of groups such as Roma;⁷⁰ and reiterated Italy’s proper role in taking action, such as suppressing funding in accordance with racist and xenophobic political discourse.⁷¹ The report also emphasized the need for improvement in the areas of housing and discrimination, as well as the necessity of providing legal identity and legal protections.

69. The ECRI Third Report found no progress since the recommendations of its Second Report. The Third Report stated:

In its second report, ECRI dealt extensively with the situation of marginalisation, disadvantage and discrimination experienced by Roma and Sinti in Italy. It made recommendations to the Italian authorities aimed at improving the situation of this part of the Italian population in vital fields such as housing, issuing of personal documents, education, employment, health, administration of justice and relations with the police. ECRI notes with regret, however, that no or very little progress has been achieved since then in virtually all the fields highlighted in that report.⁷²

70. Particularly with respect to Italy’s racist and xenophobic justifications for grave deviation from such recommendations, the standard for State Party obligations arrived at by the ECSR remains the appropriate standard for Italy. The ECSR has found that compliance with Charter obligations requires State Parties to ensure the enjoyment of Charter rights by taking practical action within a reasonable timeframe and using maximum available resources to achieve

⁶⁷ Ibid, para. 17(c).

⁶⁸ Resolution ResCMN(2006)5 “on the implementation of the Framework Convention for the Protection of National Minorities by Italy” by the Council of Europe Committee of Ministers, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies, para. 1(b) (emphasis added).

⁶⁹ ECRI Third Report (Italy) CRI(2006)19, supra, para. 90.

⁷⁰ Ibid, para. 79.

⁷¹ Ibid, para. 91.

⁷² Ibid, para. 92.

measurable progress.⁷³ For example, with respect to extreme poverty, the ECSR has recently described Charter compliance as requiring State Parties to take due and positive account of relevant differences, “not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.”⁷⁴

71. The ECSR has observed that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights.⁷⁵ As the European Court of Human Rights has repeatedly stressed in interpreting Article 14, the principle of equality that is reflected therein means that “[t]he right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”⁷⁶

72. With respect to vulnerable groups, positive measures must be taken to meet the specific needs of persons whose situation distinguishes them from the majority. The ECSR last reviewed the situation of Roma in Italy in *European Roma Rights Centre (ERRC) v. Italy*, finding violations to each provision of Article 31, taken in conjunction with Article E, due to the inadequate quality and quantity of camping sites for Roma who choose to follow an itinerant lifestyle or who are forced to do so; due to the systematic eviction of Roma from sites or dwellings unlawfully occupied by them; and due to the lack of permanent dwellings of an acceptable quality to meet the needs of Roma wishing to settle.⁷⁷ The ECSR therein stated that equal protection under Article E requires State Parties to take due and positive account of all relevant differences and take steps to ensure genuine accessibility to “rights and collective advantages”. The ECSR stated:

Similarly, equal treatment requires a ban on all forms of indirect discrimination, which can arise “by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”⁷⁸

73. The ECSR stated in *ERRC V. Italy* that Article 31§1, in conjunction with Article E, requires the State to show an effective right of access, and to show that criteria regulating access is not discriminatory in order to address both direct and indirect discrimination, as required for equal protection:

The Committee acknowledges that the State Party is committed to the principle of equal treatment

⁷³ *International Association Autism-Europe (LAAE) v. France*, Complaint No. 13/2002, ECSR Decision on the Merits, 4 Nov. 2003, stating at para. 53: “The Committee recalls, as stated in its decision Complaint No 1/1998 (*International Commission of Jurists v. Portugal*, para. 32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact their choices will have for groups with heightened vulnerabilities . . .”

⁷⁴ *International Movement ATD Fourth World (ATD) v. France*, complaint No. 33/2006, Decision on the Merits of 5 Dec. 2007, para. 61.

⁷⁵ *Ibid.*

⁷⁶ *Thlimmenos v. Greece*, Application No. 34369/97, European Court of Human Rights Grand Chamber, 6 April 2000, para. 44.

⁷⁷ *European Roma Rights Centre (ERRC) v. Italy*, Collective Complaint No. 27/2004, ECSR Decision on the Merits, 7 Dec. 2005, para. 12.

⁷⁸ *ERRC v. Italy*, Collective Complaint No. 27/2004, Decision on the Merits, 7 Dec. 2005, para. 20, 21; citing *Autism-Europe v. France*, Complaint No. 13/2002, Decision on the Merits, 4 Nov. 2003, para. 52 (emphasis added).

for Roma as regards access to social housing, but has failed to provide any information to show that this right of access is effective in practice or that the criteria regulating access to social housing are not discriminatory. The Committee recalls that the principle of non-discrimination in Article E includes also indirect discrimination. Its failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, means that Italy is in violation of Article 31§§1 and 3 taken together with Article E.⁷⁹

74. Recent so-called security measures are apparently based entirely on isolated and sensationalized media coverage of individual criminal allegations. Article E prohibits such racist and xenophobic reasoning from constituting the required “objective and reasonable justification” for such actions.⁸⁰ In contravention to repeated requests by the Council of Europe as well as other entities to address the situation of Roma and Sinti, Italy has further stripped these persons of rights by treating them as security threats. Allegations of security concerns have been accepted on the basis of very thin, unverified evidence of actual security concerns. Alternately, recent measures to address possible security concerns have nonetheless been enacted unlawfully. Justification must be based upon data collected by standard practices and implemented according to proper procedure.

75. Most recently, the ECSR 2007 Conclusions reiterated Italy’s positive obligation to collect data necessary to gauging the conditions of Roma residing (and working) in Italy. It states that Italy is obligated both to provide housing in conformity with the Revised Charter and further to provide data on the effectiveness of the measures taken. The Committee stated:

[T]he Committee observes that no aggregated data is available on the total number of Roma families who are concerned by all the housing solutions implemented. In particular it notes that the figures available with respect to the presence of Roma families in certain municipalities appear to be relatively low. Therefore it asks whether they only include Roma with Italian nationality or residence permits and what it is foreseen with respect to housing for all those Roma who either have another nationality or do not possess any residence document. Meanwhile [T]he Committee recalls that state authorities are responsible “for collecting data on particular groups which are, or could be, discriminated against and that the gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy” (§23).

The Committee considers that aggregated data are necessary to evaluate the effectiveness of the measures implemented so far at national level. Such data are even more relevant with respect to assessing the adequacy of housing in equipped camps and temporary dwellings within new settlements called “villages”. The situation is therefore not in conformity with the Charter.⁸¹

⁷⁹ Ibid, para 46.

⁸⁰ ResChS(2006)4 of 3 May 2006 states, “Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justification, any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter.” As discussed herein at paragraphs 20, 21, 23 24, 74, Italian policy bases itself on the characterization that Roma are nomads and threats to security. For example, the Milan Pact for Security directs its measures specifically at “nomads”, in reference to Roma. As well, the Decree of the Council of Ministers in Naples issued 21 May stated in its Preamble: “Considering the extremely critical situation that has developed in the territory of the Lombardy region, due to the presence of numerous irregular third-country citizens and nomads who have settled in a stable manner in urban areas; considering that the aforementioned settlements, due to their extreme precariousness, have caused a situation of serious social alarm, with the possibility of serious repercussions in terms of public order and security for the local populations; also considering that the situation described above has caused an increase in social alarm, with serious incidents that seriously endanger public order and security; considering that the aforementioned situation, that concerns various levels of territorial government due to its intensity and extension, cannot be tackled using the instruments envisaged in ordinary legislation . . .”

⁸¹ ECSR Conclusions 2007 (Italy) Article 31 § 1 Follow-up to Complaint *ERRC v. Italy* decision, Dec. 2007

76. The ECSR articulated the importance of such data in its recent finding of non-compliance against France.

In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective... In connection with timetabling... it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.⁸²

77. In light of the lack of adequate data and lack of a national strategy for positive action, Italy's recent census-gathering campaigns, developed and implemented under the State's police powers, violate existing law and are cause for alarm. These campaigns, by accounts of high-level government authorities, are undertaken not in an effort to improve the situation of Roma, but to allow for targeted systematic evictions and collective expulsion.

78. On 6 June 2008, Italian authorities announced plans to conduct censuses in Romani camps, including fingerprinting the inhabitants. The relegation of the creation of data collection strategy to prefects has resulted in alarming violations discussed herein. Census activities identify both race and religion in addition to taking fingerprints and photographs of individuals.⁸³ Censuses and fingerprinting of Roma living in camps were conducted in Milan, Naples and Rome.⁸⁴ All camp residents were fingerprinted, including children and often in the absence of the informed consent of the parent.

79. The Schengen Border Code, as an instrument in the implementation of EU Directive 2004/38 and Article 21 on internal border controls, specifies when Member States may conduct internal police checks.⁸⁵ Article 21 only allows police checks when they:

1. do not have border control as an objective;
2. are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime;
3. are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders;
4. are carried out on the basis of spot-checks.⁸⁶

80. The systematic police checks of "nomad camps," authorized by Italy's security measures, are not in compliance with the Schengen Border Code because they involve targeted and systematic checks.

(emphasis added).

⁸² *International Movement ATD Fourth World (ATD) v. France*, Complaint No. 33/2006, Decision on the Merits, 5 Dec. 2007, para. 65-66.

⁸³ Coalition Report, *Security a la Italiana*, allegation confirmed by documentation by The Community of Sant'Egidio, a Catholic Human Rights Group, based in Rome, Italy and actively working with Roma, page 10.

⁸⁴ Coalition Report, *Security a la Italiana*, citing Email communication from Mr Piero Colacicchi dated 2 July 2008, page 20.

⁸⁵ Regulation EC No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

⁸⁶ *Ibid*, at Article 21, Checks within the territory (a)(i) – (iv).

2. Italy Violates Article 31, Read Alone or in Conjunction with Article E, Due to its Continuing Failure to Create and Implement an Appropriate National Framework, Regression in the Area of Housing, Perpetration of Forced Evictions and Continuing Lack of Assistance for Roma and Sinti

81. Article 31 of the Revised Charter states:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- (1) to promote access to housing of an adequate standard;
- (2) to prevent and reduce homelessness with a view to its gradual elimination;
- (3) to make the price of housing accessible to those without adequate resources.

82. Italy has failed to uphold each sub-section of its Article 31 obligations. It has been repeatedly determined that Roma and Sinti in Italy do not enjoy rights under Article 31 in law or in practice, and unfortunately, the situation remains unimproved. The Italian Republic's violation of Article 31 manifests itself in a number of ways. Not only has Italy failed to implement a national framework to meet its Article 31 obligations, it has also regressed in its compliance with Article 31 with the implementation of so-called security measures, which have led to a number of forced evictions. In addition, Italy has not provided assistance for Roma and Sinti wishing to settle.

2.1 Non-implementation of Article 31 – Failure to Implement an Appropriate National Framework

83. Italy has been on notice of its failure to comply with Article 31 and the need for improvement. However, in spite of the clear language coming from the ECSR, the Italian Republic has failed to apply a national framework that effectively implements Article 31.

84. In *European Roma Rights Centre (ERRC) v. Italy*,⁸⁷ the ECSR found Italy to be in violation of each provision of Article 31, the right to housing, taken together with Article E.⁸⁸ The Committee of Ministers adopted ResChS(2006)4 on 3 May 2006, stating:

Having regard to the report transmitted by the European Committee of Social Rights, in which the European Committee of Social Rights concluded:

i) unanimously that the insufficiency and inadequacy of camping sites constitutes a violation of Article 31§1 of the revised Charter taken together with Article E.

Article 31§1 guarantees access to adequate housing, which means a dwelling which is structurally secure; safe from a sanitary and health point, i.e. it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; not overcrowded and with secure tenure supported by law. Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications, any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter. Italy failed to give evidence that i) it has taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs; and that ii) it has ensured or has

⁸⁷ *ERRC v. Italy*, Collective Complaint No. 27/2004, Decision on the Merits, 7 Dec. 2005.

⁸⁸ *Ibid*, at para. 37; 31§2 at para. 42; and 31(1) in conjunction with 31(3) at para. 46; each taken together with Article E.

taken steps to ensure that local authorities are fulfilling their responsibilities in this area. By persisting with the practice of placing Roma in camps, the government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.

ii) unanimously that forced evictions and other sanctions constitute a violation of Article 31§2 of the revised Charter taken together with Article E.

Under Article 31§2, states parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available. The Committee found that Italy has failed to establish that the relevant evictions it carried out satisfy these conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions.

iii) unanimously that the lack of permanent dwellings constitutes a violation of Article 31§1 and 31§3 of the revised Charter taken together with Article E.

Under Articles 31§1 and 31§3, it is incumbent on states parties to ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawfully resident or regularly working on their territory. On the issue of permanent dwellings, the Committee noted that while Italy was committed to the principle of equal treatment for Roma as regards access to social housing, it failed to provide any information to show that this right of access is effective in practice or that the criteria regulating access to social housing are not discriminatory.⁸⁹

85. As has been addressed by many Council of Europe entities as well as human rights organizations, the situation in Italy has regressed rather than improved since ResChS(2006)4. Due to a resurgence of anti-Roma sentiment and its pervasive legal, economic and social manifestations, Roma and Sinti in Italy currently suffer deeper violations to their right to housing and non-discrimination than even a few years ago. The ECSR found in its 2007 Conclusions (Italy) that Italy had as yet failed to address the findings of non-compliance with Article 31 §§ 1, 2 and 3 taken together with Article E. The Committee found that, “the situation of Roma is not in conformity with the Charter due to the fact that not all regions have adopted legislation on Roma and there is not yet framework legislation at national level.”⁹⁰

86. Subsequent to ECSR findings of non-compliance in *ERRC v. Italy*, the ECSR provided additional clarity in the areas of housing rights and State Party obligations to fulfill the rights of vulnerable groups. With the goal of securing the right to housing for Roma and Sinti, the ECSR noted in *ATD v. France*:

As regards housing for Travellers, the Committee refers to Committee of Ministers Recommendation No. (2005)4 on improving the housing conditions of Roma and Travellers in Europe, which states, *inter alia*, that Member States should ensure that, within the general framework of their housing policies, integrated and appropriate housing policies targeting Roma and Travellers are developed.⁹¹

87. The ECSR elaborated on the requirements of such a framework in the same opinion, stating that while the State Party obligation is not defined by results, it does encompass

⁸⁹ *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, Committee of Ministers Resolution ResChS(2006)4, adopted 3 May 2006 (emphasis added).

⁹⁰ 2007 Conclusions (Italy), ECSR on Articles 30 and 31, *Follow up to Complaint ERRC v. Italy decision*, Dec. 2007.

⁹¹ *ATD v. France*, No. 33/2006, para. 149.

obligations to do the following:

- 1.) Adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- 2.) maintain meaningful statistics on needs, resources and results;
- 3.) undertake regular reviews of the impact of the strategies adopted;
- 4.) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- 5.) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.⁹²

88. Collection of meaningful data, monitoring, assessing and reviewing, as mentioned in *ATD v. France*, are critical mechanisms necessary to develop an adequate national framework, particularly in the area of housing. The ECSR specifically addressed research and data collection as a prerequisite to the design and implementation of an adequate housing policy, citing the Guidelines on Access to Housing for vulnerable groups:

The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.

The Committee refers in this context to the Guidelines on Access to Housing for Vulnerable Groups, of which the Committee of Ministers took note at the Deputies' 995th meeting on 16 May 2007. According to paragraph 11 of the Guidelines:

Housing policies should be evidence based, and therefore the knowledge base should be improved through research and regular data collection. Adequate knowledge of housing situation, especially statistical information, is a prerequisite for effective housing policy design and implementation. Regular collection of relevant statistical information on housing issues, including housing needs assessment should be carried out.⁹³

89. The 2008 ECSR Decision *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France* also articulated the necessity of collecting data in the context of the State's obligation to prevent homelessness pursuant to Article 31§2. The ECSR stated in *FEANTSA v. France*:

[The Committee] also recalls that in order to reduce homelessness gradually as prescribed by Article 31§2 of the Revised Charter, States must obtain the necessary factual information to deal with the problem. The regular collection of data is a first step towards achieving this objective (Conclusions 2005, France).⁹⁴

90. Italy has not upheld these obligations for assessment and creating a framework. Furthermore, the obligation conferred upon State Parties extends beyond creating such a framework. State Party obligations require ensuring the factual implementation of such a framework. To this end, the ECSR held in *ATD v. France* that despite the existence of an acceptable national policy:

⁹² Ibid, paras 60.

⁹³ Ibid, paras. 63, 64 (emphasis added).

⁹⁴ *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, 5 Dec. 2007, para. 104 (emphasis added).

The Committee considers that the implementation of this policy does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of social housing for the most socially deprived. The situation therefore constitutes a violation of Article 31§3.⁹⁵

91. In addition to effective implementation, the right to housing guarantees the right to effective remedy in the case of the violation of the right. In Italy there is neither an appropriate framework for legal remedy nor factual implementation of such. Thus, Italy is in violation of Article 31, read alone or in conjunction with Article E.

2.2 Article 31§1 – Deliberate Retrogressive Measures Aggravating the Lack of Adequate Housing

92. Conditions for Roma and Sinti have dramatically worsened subsequent to the Committee’s previous findings of non-compliance with Article 31. Particularly flagrant is Italy’s adoption of so-called emergency security measures against Roma. Italy’s failure to uphold its obligations under the Revised Charter has degenerated from being a failure to protect and fulfill rights, to an additional failure to respect rights under the Revised Charter. Consequently, the situation of Roma and Sinti in Italy requires special attention and priority.

93. Article 31§1 provides that State Parties must act “to promote access to housing of an adequate standard.” As stated in *European Roma Rights Centre v. Italy*, under Article 31§1, taken in conjunction with Article E, Italy is obligated to take due and positive account of the situation of Roma, and provide housing of an adequate quantity and quality to meet their particular needs.⁹⁶ To this end, the ECSR has stated that national framework legislation is required of Italy. Italy is further obligated under Article 31§1 in conjunction with Article E to ensure that local authorities properly enact such legislation and ensure Charter rights.

94. As stated, the ECSR found that Italy was in violation Article 31§1 in conjunction with Article E in *ERRC v. Italy*. The assessment of the Committee follows:

... [O]n the one hand [the Italian government] claims to have taken all the necessary legal measures to safeguard Roma living conditions, while on the other it places responsibility for such an inadequate situation on the Roma themselves, who would be responsible for having seriously damaged the facilities placed at their disposal. Similarly, the Government has not produced any evidence to show that the number of camps is sufficient, but has confined itself to recognising the existence of unauthorised camps, whose establishment is attributed to Roma misbehaviour.

Article 31§1 guarantees access to adequate housing, which means a dwelling which is structurally secure; safe from a sanitary and health point, i.e. it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; not overcrowded and with secure tenure supported by law (see Conclusions 2003, Article 31§1, France, p. 221, Italy, p. 342, Slovenia, p. 554, and Sweden, p. 650). The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.

The Committee recalls that Article 31§1 E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications (see paragraph 1 of the Appendix), any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter. On the contrary, by persisting with the practice of placing

⁹⁵ *ATD v. France*, No. 33/2006, para. 100.

⁹⁶ *European Roma Rights Centre v. Italy*, Collective Complaint No. 27/2004, ECSR Decision on the Merits, 7 Dec. 2005, paras. 36, 37.

Roma in camps the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.

The Committee therefore finds that Italy failed to show that:

- it has taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs;
- it has ensured or has taken steps to ensure that local authorities are fulfilling their responsibilities in this area.⁹⁷

95. In its 2007 Conclusions (Italy), the ECSR recalled that under the Revised Charter, adequate housing entails:

- 1.) A dwelling which is structurally secure;
- 2.) safe from a sanitary and health point, i.e. it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity;
- 3.) not overcrowded; and
- 4.) with secure tenure supported by law.⁹⁸

96. Additionally, in its 2007 Conclusions (Italy), the ECSR found that the situation in Italy remains in nonconformity with Article 31§1 in combination with Article E on grounds that:

- 1.) Not all regions have adopted legislation on Roma and there is not yet framework legislation at national level;
- 2.) Italy has failed again to show that it has taken adequate steps on all the territory to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs;
- 3.) Italy has failed again to show that it has ensured or has taken steps to ensure that all local authorities are fulfilling their responsibilities in this area;
- 4.) data on Roma are not yet collected at national level.

97. More recently, the Committee of Ministers spoke again on the obligation to act on a national and systematic level and to make progress in alleviating substandard housing conditions. Discussing Article 31§1 rights under the Revised Charter in the context of the situation of the homeless in France, the Committee of Ministers stated in Resolution CM/ResChS(2008)8:

Article 31§1 of the Revised Charter guarantees adequate housing for everyone, which means a dwelling which is safe from a sanitary and health point of view . . . Despite the introduction of measures by the government to eradicate substandard housing across the country, serious problems remain: health risks due to substandard conditions still affect around 400,000 to 600,000 dwellings (over 1 million persons). The absence for a considerable period of time of a systematic scheme to address the problem of substandard housing, and insufficient progress in this field, amounts to a violation of Article 31§1.⁹⁹

⁹⁷ Ibid, paras. 34-37 (emphasis added).

⁹⁸ ECSR Conclusions 2007 (Italy), *Follow up to ERRC v. Italy*.

⁹⁹ Resolution CM/ResChS(2008)8, *European Federation of National Organisations working with the homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, adopted by the Committee of Ministers on 2 July 2008 at the 1031st meeting of the Ministers' Deputies (emphasis added).

Factual Profile of Poverty and Grossly Substandard Conditions

98. Italy's obligation to create and implement a national framework to promote access to housing of an adequate standard prohibits such deliberate retrogressive measures as pacts for security and so-called state of emergency decrees, which result in widespread destruction of homes. The obligation to provide an adequate quality and quantity of housing pursuant to Article 31§1, read alone or in conjunction with Article E, prohibits such deliberate retrogressive campaigns.

99. Following Commissioner Hammarberg's June 2008 visit to Italy, he noted that living conditions in camps were unacceptably low and that they showed no improvement since the Commissioner's prior visit three years hence.¹⁰⁰ Commissioner Hammarberg noted information received that similar conditions prevail in many other camps, and that a high mortality rate resulted from such.¹⁰¹

100. Rapporteur to the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, Gerard Deprez, also described conditions of Roma camps in Italy in his Draft Report of his September 2008 delegation to Italy (LIBE Report). He stated therein that Roma camps appear as a group of barracks in very bad conditions, "like a favela".¹⁰² Rapporteur Deprez stated in this report that he, "found the situation extremely shocking notably due to the long lasting situation and the absence of the minimum standards of normal life."¹⁰³ The LIBE Report also noted the lack of water and electricity, the lack of heat caused by its being closed down by law enforcement.¹⁰⁴ The Hammarberg Memorandum also described the camp as lacking any access to electricity or water, and consisting of "caravans, shacks and chemical toilets, many of the latter in an obviously too bad state for use."¹⁰⁵

101. COHRE's own research, and that of other non-governmental organisations, corroborates these official reports. A growing number of Roma live in socially excluded locations characterised by substandard conditions on the edges of towns, segregated from the rest of the population. Recent acts by officials in a number of areas in Italy have worsened this situation.¹⁰⁶ Roma and Sinti live in "camps" or squalid ghettos that are "authorized," meaning state-approved and provided. Others are forced to "squat" in abandoned buildings or set up camps along roads, rivers or in open spaces. These individuals can be evicted at any moment, and frequently are. Their settlements are often called "illegal" or "unauthorised". Where Italian authorities have expended energy and resources on Roma, these efforts have in most cases not been aimed at integrating Roma into Italian society. Instead, authorities establish "temporary housing containers," in a number of cases surrounded by high walls, isolating them from the view of non-Romani Italians.¹⁰⁷

102. At the same time as Italian officials authorise segregated living spaces for Roma, they most often fail to ensure adequate living conditions in the authorised camps, meaning many Roma in Italy live in officially sanctioned ghetto communities with highly substandard conditions and

¹⁰⁰ Hammarberg Memorandum, CommDH(2008)18, para. 34.

¹⁰¹ Ibid, para. 35.

¹⁰² LIBE Report, page 13.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Hammarberg Memorandum, CommDH(2008)18, para. 34.

¹⁰⁶ Written Comments of the ERRC, COHRE, OsservAzione and Sucar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 4.

¹⁰⁷ Ibid, page 21.

inadequate public infrastructure or services.¹⁰⁸ Material conditions in authorised and unauthorised camps are frequently inhuman. For example, the Via Germagnano camp for Romanian Roma in Torino, as of November 2007, was a settlement of approximately 150 Romanian Roma. According to camp inhabitants, they have been there for four or five months. They had reportedly been given permission to settle there by the authorities, who had also been promising to bring in utilities, but as yet, none had been delivered. Water was carried by camp inhabitants from an open pipe near the camp. There was no electricity generated locally, and they bought gas for heating from those shops that would sell it to them (not all shops were reportedly willing to do so). There were also no toilet facilities, so residents designated an area for burying feces and other waste. When there was no gas they burned ethyl alcohol for heat. No one in the camp had an individuated address.¹⁰⁹

103. In addition, the substandard conditions prevailing in Romani camps in Italy have contributed to the deaths of at least five Romani youth in since December 2006 alone:

- On 19 November 2007, Florin Draghici, a 4-year-old Romani boy from Romania, died in a fire in a Romani camp in Bologna;
- On 2 January 2007, 15-year-old Cristina Mihalache and 15-year-old Nicolae Ihnunt from Romania died in a fire in Caserta's Camp d'Orta di Atella; and
- On 2 December 2006, 16-year-old Ljuba Mikic and 17-year-old Sasha Traikovic from Serbia died in a fire that broke out in Rome's Camp Casilino.¹¹⁰

104. The shocking conditions¹¹¹ under which Roma and Sinti live represent egregious violations of Article 31 §1, read alone or in conjunction with Article E, by the Italian Republic.

2.3 Article 31§2 - Failure to Protection Against or Remedy Violence, Forced Evictions and Destruction of Homes

105. Article 31§2, “to prevent and reduce homelessness with a view to its gradual elimination,” obligates State Parties to take measures towards the gradual reduction of poverty, including refraining from causing homelessness, and confers specific obligations and prohibitions in the area of forced eviction. In addition to going against almost unanimous recommendations to improve the situation of Roma and Sinti, the recent campaigns targeting Roma and Sinti as a security threat directly violate Article 31§2.

106. In Resolution ResChS(2006)4 on *ERRC v. Italy*, the Committee of Ministers found that Italy's systematic forced evictions of Roma were in violation of Article 31§2 taken in conjunction with Article E:

Under Article 31§2, states parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available. The Committee found that Italy has failed to establish that the relevant evictions it carried out satisfy these conditions, and has not provided credible evidence to refute the claims that Roma

¹⁰⁸ Ibid, page 13.

¹⁰⁹ Ibid, pages 21-22.

¹¹⁰ Ibid, page 22.

¹¹¹ LIBE report, page 13.

have suffered unjustified violence during such evictions.¹¹²

107. In *FEANTSA v. France*, the ECSR additionally laid out that in the context of deprivation of housing due to insolvency or wrongful occupation, State Parties are obligated to ensure proper procedure, including participation, notice, re-housing in the case of justified evictions, and remedy in case of wrongful evictions:

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during winter and provide legal remedies and offer legal aid to those who are in need so they may seek redress from the courts. Compensation for illegal evictions must also be provided. Procedural guarantees are important. Even when an eviction is justified, authorities must adopt measures to re-house or financially assist the persons concerned.¹¹³

108. The Committee of Ministers further addressed Article 31§2 obligations in ResChS (2008) 8 on *FEANTSA v. France*. The Committee of Ministers stated therein that State Parties are obligated to put into place procedures to limit the risk of eviction.¹¹⁴ Italy's recent so-called security measures directly oppose such an obligation.

109. The obligation to prevent homelessness is not satisfied by the provision of housing of an inadequate quantity and quality. Article 31§2, while providing a right to shelter, further provides the right to shelter of an adequate standard within a reasonable timeframe. The ECSR found in *FEANTSA v. France* that:

As regards living conditions in sheltering facilities, the Committee believes these should be such as to enable living in keeping with human dignity, and that support should be routinely offered to help the persons within the facilities to attain the greatest possible degree of independence. It also recalls that the temporary provision of accommodation, even decent accommodation, cannot be considered a satisfactory solution, and people living under such conditions must be offered housing of an adequate standard within a reasonable time.¹¹⁵

110. Adequate housing, as stated, entails housing that is adequate in location as well as not overcrowded. Further, in finding France non-compliant with Article 31§2 in *International Movement ATD Fourth World (ATD) v. France*, the ECSR stated that the “unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide re-housing solutions for evicted families constitute a violation of Article 31§2 of the

¹¹² Complaint No. 27/2004, adopted 3 May 2006.

¹¹³ *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, No. 39/2006, Decision on the Merits, 5 Dec. 2007, at para. 88 (emphasis added).

¹¹⁴ ResChS(2008)8, adopted 2 July 2008: “Under Article 31§2 of the Revised Charter, Parties must put in place procedures to limit the risk of evictions. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. Certain elements of the French system on evictions, for example, the two month period after formal notice has been served before eviction can take place, or the suspension of evictions in winter, comply with the guiding principles laid down by the Charter. However, the French system does not, either in law or in practice, offer the required safeguards, particularly as regards rehousing. The Anti-Exclusion Act of 29 July 1998 contains no guarantees that a person subject to eviction will be rehoused. Therefore, given the high number of eviction judgments which are issued in France every year, and taking into account the risk of eviction leading to situations of precariousness, the lack of guarantees ensuring stable and accessible rehousing options before eviction takes place amounts to a breach of Article 31§2.”

¹¹⁵ *FEANTSA v. France*, No. 39/2006, para. 108 (emphasis added).

Revised Charter.”¹¹⁶

111. All of these elements are addressed in the ECSR 2007 Conclusions (Italy) on Article 31, where the ECSR stated:

The Committee notes from the information submitted by ERRC that the project of closing down camps and establishing “villages” in the outskirts of the big cities (Rome and Milan) appears to be only another way to re-create segregated settlements where Roma families will be forcibly moved. In addition, the limited number of places available (4,000) in the new settlements implies the forced eviction by the camps of many Roma who will be rendered homeless (ERRC claims them to be 10,000 according to the figures given by the Major of Rome in public speeches). Finally, the initiative appears to be rather the result of a widespread need of security expressed by the Italian population than the outcome of a growing awareness of the necessity to provide Roma with better housing.

112. Not only has Italy itself rendered large numbers homeless in the implementation of so-called security measures, but in the few cases where alternative accommodation has been provided for, such as in the case of Rome, the alternative far from satisfies requirements of both quality and quantity. Further, these regressions ensue from explicitly discriminatory justification.

113. The 2007 Conclusions (Italy) reiterate Italy’s burden of proof to establish non-discrimination in the areas alleged:

. . . [The Committee] points out that no new evidence has been provided on the respect of the requirements for eviction set under the Charter as regards to the evictions already carried out. To this purpose, the Committee recalls that “when credible evidence is adduced alleging discrimination it becomes incumbent on the State party concerned to answer to the allegations by pointing to, for example, legislative or other measures introduced, statistics and examples of relevant case-law” (§24). Since this has not been the case, it reiterates its conclusion of non conformity.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 31§2 in combination with Article E of the Revised Charter on the grounds that Italy has failed again to establish that the relevant evictions it carried out satisfy the necessary conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions.

114. Systematic destruction of existing formal and informal housing, as well the creation of new camps on the peripheries, does not comply with standards of adequacy, and does not satisfy the obligation to prevent homelessness under Article 31§2. Discriminatory targeting of Roma and Sinti for eviction and expulsion is authorized by local and national legislation and carried out by police powers. Non-state actor violence, furthermore, appears to be condoned by the Italian authorities. At minimum, Italian authorities have failed to pursue legal remedies, such as investigation or issuing charges for these violations. Rather than taking steps to address the situation of non-compliance with Article 31§2, Italy has taken gravely regressive steps at all levels of government against Roma and Sinti living both in informal and in formal settlements as well as against those with Italian citizenship.

¹¹⁶ *International Movement ATD Fourth World (ATD) v. France*, Complaint No. 33/2006, Decision on the Merits, 5 Dec. 2007, para. 83.

Factual Profile Article 31§2 on Forced Eviction

115. Police complicity in forced evictions of Roma has been well-documented. Italian law has designated the police as the primary actor to address Roma issues in Italy, as noted in paragraph 32, with predictably grave results. The Coalition Report *Security a la Italiana*, states:

During the Coalition's May 2008 field mission, almost all Romani individuals with whom representatives spoke indicated that the frequency and intensity of illegal police raids of their homes and living areas had been continually increasing in recent months. In addition, several instances of high profile mass forced evictions/demolitions of Romani camps have taken place in recent months. Many of the Romani individuals with whom the Coalition spoke noted the level of violence with which police act to be extremely intense.¹¹⁷

116. The Coalition documented forced eviction in Milan:

The Bacula Camp was originally settled by about 600 Roma living in barracks and tents under the railway bridges. The camp was forcibly evicted and the dwellings destroyed by the police reportedly at the beginning of 2008. During the police intervention, all personal belongings of the inhabitants were destroyed as well. The inhabitants moved to Bovisa – a site of a former industrial zone closed 20 years ago. Meanwhile the site was used by the inhabitants of Milan as a waste disposal area. The land is polluted with arsenic, thallium and asbestos.

In another case from Milan, in March 2008, the police evicted the inhabitants of the newly established camp in Bovisa and about 80 persons (ten families) fled to the Bacula settlement; the rest either returned to Romania or dispersed to other settlements. According to witnesses, the openly declared motivation of the evictions was to force the Roma to return to Romania.¹¹⁸

117. Similar raids occurred near Naples at the Ponticelli camp. During the raids, an estimated 800 Romani were expelled from their homes by fire and physical violence. Though these raids and resulting evictions were spurred by accusations that a 16-year Roma girl attempted to kidnap an Italian baby, the site had previously been slated by the municipal council for eviction by the 4th of August in order to implement the Urban Rehabilitation Program.¹¹⁹ The Coalition Report documents the violent attacks within the Roma settlement at Ponticelli:

[T]he most publicised of these attacks took place against a Romani camp in Ponticelli, near Naples. According to information gathered by the Coalition in Italy and numerous media reports, on 13 May, about 60 unidentified Italian citizens, armed with bats, attacked the Ponticelli Romani camp, throwing Molotov cocktails at the homes. Luckily no one was injured during the attack, but the homes of the Romani inhabitants were burned to the grounds, with all of their personal possessions.

According to documentation gathered by the Coalition, that evening, hundred of Italians persons armed with bats and rocks attacked another Romani camp in the area, throwing rocks at the inhabitants and their homes. Amongst the attackers were youth and children.

Approximately 800 Roma of Romanian origin, including women and children, were attacked by locals as they left the Ponticelli Camp by night, without any of their personal belongings. Many of them returned to Romania or sought refuge in other Romani camps around Italy. Reportedly, only a few Romani individuals stayed in Naples, but they refused interviews because of fear. All personal effects or property were abandoned in the camps they were forced to leave by night . . .

¹¹⁷ Coalition Report, *Security a la Italiana*, page 24.

¹¹⁸ Ibid, page 25.

¹¹⁹ LIBE report, page 15.

Two weeks later, on 28 May, the same camp was set on fire for the second time by unknown perpetrators. On 7 July, it was reported that the Ponticelli camp was set on fire in yet a third arson attack by unidentified perpetrators, after several Romani families had moved back to the area.¹²⁰

118. In Rome alone, a reported 1,000 persons at least had had their homes destroyed and been expelled by Italian authorities.¹²¹ The Coalition Report documents the following violations in Rome, based again upon field interviews:

[O]n 6 June 2008, Italian authorities destroyed the Testaccio Romani camp in Rome, which housed some 120 Romani individuals, including 40 children. According to media reports, many of the inhabitants of the camp had reportedly been transferred from a previously destroyed camp in Rome's Saxa Rubra area. The persons concerned are reportedly Italian citizens; no adequate alternative housing has been provided.

During field research conducted in May 2008, Romani interviewees noted that police officers often conduct arbitrary raids on their camps and homes. During such raids, police officers often enter their homes, without legal authorisation/search warrants, in the middle of the night, and the demolition of homes and other buildings often takes place without any court order. During such destructions of property, police officers often refuse to allow the Roma concerned to remove their personal belongings.

While police and other state actors were noted to target informal camps more frequently, residents of some formally-established, government-sanctioned camps also reported abusive police raids having taken place in recent months. In addition, police raids of their homes and camps were noted to take place regularly, so the same persons must endure the same abusive treatment by police officers on a constant basis. For example, Italian Roma living in Rome's Via Salviati camp reported to members of the Coalition that police officers conducted regular checks of the camp, at least every week or two. During such checks, Italian and non-Italian Roma are forced to ensure relentless checks of their personal documents, a degrading form of treatment to which non-Roma Italians and invisible immigrants are not subjected.

One Romani woman living in Rome's semi-formal Camp Casilino 900 testified to the Coalition recalled that in early April 2008, police officers entered the camp and destroyed 36 shacks. The woman testified:

I had a depot where I store things that I sell at the market. Approximately 6 weeks ago the police came and destroyed the depot together with 36 shacks. I was not allowed to remove my belongings though I begged them to allow me. In response they screamed at me, 'Go away!'

I have several health issues, including heart problems. When the police were destroying my depot, my heart condition worsened. Only after half an hour did the police allowed me to take my medicine from my house. After taking the medicine, I felt very weak and wanted to lie down but police did not allow me. I was only allowed to sit on a chair.

When they destroyed the depot, the police threatened that they will destroy my house and all the camp soon, as well. Actually, they would have wiped out my house the same day together with the depot but my health condition stopped them.

One Romani individual living in Rome's semi-formal Camp Casilino 900 camp with whom the Coalition spoke stated, "The police sometimes arrive at 2:00 - 3:00 AM. They even break the doors

¹²⁰ Coalition Report, *Security a la Italiana*, page 18, 19.

¹²¹ CommDH(2008)18, para. 38.

of the shacks. They order people to go out in a very hostile and violent way. The police are full of prejudices against Roma.”

Another person living in Rome’s semi-formal Camp Martora reported that, “They [the police] enter the houses very violently. They destroy things! During one of the night raids, my son peed in his pants because of fear. When they come at night, they do not respect privacy. Women may be naked!”¹²²

119. The Report quotes a man from Rome who states, “[t]he police feel that they can behave as they wish when they come to the camp. Almost three months ago, immediately after we moved to our camp, the police came and they put everybody in line in front of a wall to count us. They were very uncouth. They were pushing people around.”¹²³

120. In Bologna in November 2007, OsservAzione documented forced evictions, finding that illegal practices perpetrated by the police in larger cities such as Rome, Milan and Naples are similarly perpetrated throughout the country in smaller locales as well. According to OsservAzione, in 2005 Mayor Sergio Cofferati of Bologna launched a campaign for the destruction of a series of informal Roma settlements. The project, called “A battle for legality,” had the stated purpose of protecting the weaker members of society:

[A]ctions of solidarity towards the weaker strata of population must be associated, when necessary, with repressive actions; uniting solidarity and a respect for the law is the only way to guarantee an urban life suitable to human well being and so to protect those belonging to the weaker levels of [Italian] population, first victims of criminality.¹²⁴

121. During these reported forced evictions in Bologna, only in a few cases were persons provided with alternative accommodation. In most cases, persons were rendered homeless. The report details the following actions of forced evictions and destruction of property, beginning in March 2005:

1. On 21 March 2005, ten shacks inhabited by about 30 Roma were destroyed in Bologna’s Lungo Reno area. The affected Roma were left homeless by the destruction.
2. On 19 October 2005, state policemen, carabinieri, town policemen and city cleaners with bulldozers destroyed all shacks in the unofficial Romani camp between Via Triunvirato and Via Agucchi and the Romanian Roma living there were arrested. Some of the arrested Roma were sent to a Centro di Permanenza Temporanea (Temporary Stay Centre – CPT), while others were deported to Romania. Exact numbers for this case were not available because it was a strictly police action with no social workers or other civilians present.
3. On 17 November 2005, Bologna authorities conducted another forced eviction in the Lungo Reno area. All shacks were destroyed after most of the inhabitants had been transferred to container housing in a so-called authorised camp on Via Santa Caterina di Quarto, in the San Donato zone. Thirteen of the affected Roma were sent to the CPT and no information is available about what became of them.

¹²² Coalition Report, *Security a la Italiana*, page 25, 26.

¹²³ Coalition Report, *Security a la Italiana*, interview with a Romanian Romani man at Rome’s Camp Cave di Pietralata, 29 May 2008, page 27.

¹²⁴ Written Comments of the ERRC, COHRE, OsservAzione and Sugar Drom Concerning Italy for consideration by the United Nations CERD at its 72nd Session, page 27.

4. Following a request for land by the local university, on 20 June 2006, 10 shacks from Camp Via Gobetti, in the Navile area, were destroyed. Most of inhabitants were able to escape before the police arrived.
5. On 4 August 2006, local authorities evacuated an abandoned building called Ex Centro di Formazione Professionale Casteldebole where various groups of Romanian Roma had lived as squatters. All entrances to the building were blocked to prevent anyone from returning.
6. On 14 October 2006, local authorities destroyed with bulldozers the shacks of around 20 Romanians – mostly Roma – at Camp Via Piò.
7. On 23 October 2006, Bologna authorities destroyed with bulldozers a Romani camp on the bank of the river Reno, near Bologna's Borgo Panicale area. None of the inhabitants were provided accommodation and within several days had relocated to a new camp under a nearby bridge.
8. On 18 November 2006, local authorities destroyed with bulldozers a large camp housing more than 170 Roma located on Via Bignardi. One hundred and twenty-three Romanian citizens, mostly Roma, 60 of whom were children, were found by the police and taken in custody. That same evening 40 Roma were deported to Romania, 14 Roma were placed in a CPT, and 13 were placed in prison for failing to comply with an order to leave the country. Approximately 50 individuals managed to escape before police surrounded the camp and resettled in other unauthorised areas.
9. On 18 November 2006, 41 Romanian Roma were forcibly evicted by local authorities from their homes in an unauthorised camp in the Via Bignardi/Via Gobetti area, without being provided any alternative accommodation. For several days, the families lived on the main square in Bologna, before they were able to negotiate with the local administration for housing in a civil protection building on Via dell'Industria. After several weeks, the families were transferred to an unused school.
10. On 14 December 2006, police took 50 Romanian Roma, mostly women and children, living in a farmhouse on Via Malvezza into custody. Thirty of the affected individuals were deported to Romania, six were arrested for failing to comply with orders to leave the country and the remainder were held in custody by the carabinieri before being released with written orders to leave the country.
11. On 12 July 2007, Bologna authorities forcibly evicted around 100 Roma, including about 30 children, living in a farmhouse on Via Malvezza, without providing any alternative accommodation. After moving from place to place, the affected Roma eventually settled in a public park on Viale Marx. According to local police, the eviction was part of the "Bologna Safety Pact", signed in June 2006 by the Mayor, the State Representative and the Ministry of Interior.
12. On 16 July 2007, local police surrounded the Viale Marx camp and forced Roma living there to leave.
13. On 25 July 2007, police forcibly evicted 20 Romanian Roma from the Lungo Reno camp.

14. On 26 July 2007, Bologna police destroyed a camp inhabited by 20 Romanian Roma with bulldozers on Via Marco Polo.

15. On 29 August 2007, local police confiscated the camper of a 12-member Romani family that had in July 2007 been evicted from their home on Via Malvezza. The family, including 10 children were left without a home for the second time in the period of one month.¹²⁵

122. In Naples, on 11 May 2008, Minister of Interior Roberto Maroni stated publicly that “All Romani camps will have to be dismantled right away, and the inhabitants will be either expelled or incarcerated,” according to the national Italian newspaper La Repubblica. Two days later on 13 May, a mob of approximately 60 people razed a Romani camp in Naples with Molotov cocktails.¹²⁶

123. According to the results of a May 2008 poll by the national Italian newspaper La Repubblica, 68 per cent of Italians want to deal with the “Roma Gypsy problem” by expelling all of them.¹²⁷ In late May, following the arson attack on the Romani camp in Naples, the LA Times quoted Northern League representative to the Lombardy Regional Government, Mr. Davide Boni, as stating, “All Gypsies must go.” In keeping with this proclamation, Roma families have indeed suffered from systematic forced evictions and the homelessness and degradation flowing therefrom.

124. The litany of forced evictions, that have occurred throughout Italy, represent blatant and systematic violations of Article 31 §2, read alone or in conjunction with Article E.

2.4 Article 31§3 - Continuing Lack of Assistance for Roma and Sinti Wishing to Settle

125. Article 31(3) requires State Parties “to make the price of housing accessible to those without adequate resources.” Article 31(3) read alone or in conjunction with Article E requires State Parties to make arrangements for allocating social housing to the most deprived members of the community, of whom Roma inarguably are. Italy persists in its failure to make accessible and affordable permanent dwellings of an adequate quality to meet the needs of Roma and Sinti, including those who are forcibly confined in segregated camps and those who never lived in a camp in their country of origin. Italy has no national strategy for making housing affordable and accessible to Roma, and persistently ignores the fact that Roma and Sinti seek the same social benefits as others.

126. In *ERRC v. Italy*, the ECSR found that Italy’s failure to provide dwellings of an acceptable quality to meet the needs of Roma wishing to settle placed Italy in non-compliance with Article 31§1 and 31§3 of the Revised Charter read in conjunction with Article E.¹²⁸ As stated in *ERRC v. Italy*, the Revised Charter creates an obligation to provide affordable social housing, and to ensure access to disadvantaged groups.¹²⁹

127. The Committee of Ministers adopted this finding in Res.ChS(2006)4, stating:

¹²⁵ Ibid, page 27-28.

¹²⁶ Coalition Report, *Security a la Italiana*, page 29.

¹²⁷ Ibid, page 16.

¹²⁸ *ERRC v. Italy*, Complaint No. 27/2004, para. 12.

¹²⁹ Ibid, para. 45.

Under Articles 31§1 and 31§3, it is incumbent on states parties to ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawfully resident or regularly working on their territory. On the issue of permanent dwellings, the Committee noted that while Italy was committed to the principle of equal treatment for Roma as regards access to social housing, it failed to provide any information to show that this right of access is effective in practice or that the criteria regulating access to social housing are not discriminatory.¹³⁰

128. State obligation in conjunction with the principle of non-discrimination requires effective, not just theoretical, allocation of benefits and access to social housing for vulnerable groups. Roma and Sinti in Italy nonetheless have not been the recipients of assistance in the area of housing, despite that they constitute a group of deepest and most urgent need. As the ECSR stated in its 2007 Conclusion (Italy):

Moreover, the Committee recalls that, under Article 31§3 housing benefits must be introduced at least for low-income and disadvantaged sections of the population. Housing allowance is an individual right and all qualifying households must receive it in practice; legal remedies must be available in case of refusal. It therefore asks whether housing benefits other than those provided to persons who have been denied access to social housing are available, as well as they fulfill the conditions mentioned above.

129. The ECSR stated in its 2007 Conclusions (Italy):

. . . [W]hile recognising the efforts carried out in certain regions, Italy failed again to show that it has taken into consideration the different situation of Roma when introducing measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, on the whole territory.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 31§3 in combination with Article E of the Revised Charter on the ground that Italy failed again to show that it has taken into consideration the different situation of Roma when introducing measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, on the whole territory.

130. As discussed herein at paragraphs 20-26, 30-39 and paragraph 74, Italy's treatment of Roma and Sinti as "nomads" in local and national housing policy results in a failure to provide access to adequate housing and therefore constitutes violations of Article 31§3 read alone or in conjunction with Article E. In some areas, officials exclude Roma and Sinti from the number considered for housing. In an apparent effort to limit the number of Roma or Sinti able to access social housing, many municipalities fail to include camps when opening public tenders for social housing.¹³¹

131. Additionally, failure to provide protection from evictions constitutes a violation of the minimal obligations under Article 31§3. Though Italy offers protections from eviction to certain categories of people, including those aged 65 and older, or parents of five or more children, those receiving welfare, or those afflicted with a terminal illness or illness lasting over six months, Roma are not included within those protected from eviction. Rather, under current law, Roma and Sinti are systematically targeted for eviction.

¹³⁰ Res.ChS(2006)4, Complaint No. 27/2004, adopted 3 May 2006 (emphasis added).

¹³¹ See Written Comments of the ERRC et. al Concerning Italy for consideration by United Nations CERD at its 72nd session, page 28.

132. Consequently, Italy's direct and indirect discrimination in providing access to legal status and social assistance constitutes a violation of Article 31§3, in conjunction with Article E.

3. Italy Violates Article 16, Read Alone or in Conjunction with Article E, on account of its Deliberate Retrogression in Social, Legal and Economic Protections for Roma and Sinti Families

133. Article 16 of the Revised Charter: The right of the family to social, legal and economic protection:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

134. Article 16 guarantees the protection of family life through, among other means, the provision of social and family benefits and family housing. The text of Article 16 articulates the obligation to "promote" the protection of family life, placing an obligation upon States Parties to progressively undertake appropriate measures. Furthermore, "the principle of equality and non-discrimination form an integral part of Article 16 as the result of the Preamble."¹³²

135. The ECSR in *European Roma Rights Centre v. Bulgaria* articulated the Article 16 right of families to housing as located within the right to social, legal and economic protections.¹³³ *European Roma Rights Centre v. Greece* clarified that under Article 16 the State is obligated to take into account the needs of families and both promote an adequate supply of housing and to ensure the adequacy of existing housing.¹³⁴

136. The right to protection from forced eviction and the right to adequate housing are identical under Article 16 and Article 31 of the Revised Charter, as stated in the ECSR *European Roma Rights Centre v. Bulgaria* decision:

The Committee considers that, as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31.¹³⁵

137. In addition to other negative effects, the implementation of so-called emergency security measures represents Italy's failure not only to promote an adequate supply of housing, but also its failure to ensure an adequate standard of existing housing.

138. The failure to promote an adequate supply of housing is exemplified by the implementation of Rome's pact for security, allocating substandard housing for 4,000 while

¹³² *European Roma Rights Centre v. Greece*, Complaint No. 15/2003, ECSR Decision on the Merits, 8 Dec.2004, para. 26.

¹³³ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, 18 Oct. 2006, para. 16. "Article 16 in its very wording of the Charter . . . provides for the right to housing of families as an element of the right of the family to social, legal and economic protection."

¹³⁴ *European Roma Rights Centre v. Greece*, Complaint No. 15/2003, ECSR Decision on the Merits, 8 Dec.2004, para. 24.

¹³⁵ *European Roma Rights Centre v. Bulgaria*, ECSR, Complaint No. 31/2005, ECSR Decision on the Merits, 18 Oct. 2006, para. 17 (emphasis added).

evicting 15,000. Beyond Rome, the destruction of camps takes place all over Italy without the provision of alternative accommodation.

139. Additionally, targeting Roma and Sinti in these measures directly contravenes Italy's obligation to respect the right of Roma and Sinti to equal enjoyment of Article 16 under the principle of non-discrimination. Forced evictions, for the reasons discussed herein under Article 31§2 at paragraphs 105-114, also violate Article 16 read alone or in conjunction with Article E. The factual profile of raids and forced evictions at paragraphs 115-124 herein is additionally incorporated into the present Article 16 allegation.

140. The impairment of economic, legal, and social protection of family life also evidences non-compliance with Article 16. Specifically, Article 16 read alone or in conjunction with Article E, is violated with actions preventing Roma families from accessing programs including housing, school and healthcare, as well as by the failure promote access to these protections. For example, the segregation into informal and semi-informal camps due to the conflation of Roma and Sinti with "nomads" effectively denies access to social and family benefits, in particular, access to adequate housing.

141. Moreover, Article 16 places an obligation upon Italy to promote access to legal status for Roma as a necessary condition to accessing social and family assistance and protecting family life, free of discrimination. In particular, delays in processing and discretionary rejection of status frequently result in effectively barring Roma and Roma families from economic and social benefits. Policies and practices of segregated and inadequate provision of housing rendering Roma outside the ambit of legal status also violate Article 16 protections. Consequently, Italy is in violation of its Article 16 obligations.

4. Italy Violates Article 19, Read Alone or in Conjunction With Article E, on account of its Failure to Provide Assistance or Protection in the Areas of Housing and Racist and Xenophobic Discourse and its Failure to Provide Proper Procedure or Legal Redress in Cases of Expulsion

142. Articles 19 §§1, 4, 7 and 8 of the Revised Charter guarantee among States Parties protection and assistance to migrant workers and their families. Articles 19 §§1, 4, 7 and 8, read alone or in conjunction with Article E, create State obligations in the areas of racist and xenophobic discourse, housing, protection from expulsion, and access to legal redress.

143. Article 19 §1 requires States Parties to take measures to prevent racist and xenophobic propaganda targeting immigrating persons as criminal or dangerous. Paragraph 1 provides:

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration (emphasis added).

144. States are obligated to prevent propaganda and take measures to prevent the communication of misleading or false information to nationals and migrants seeking either to

enter or leave.¹³⁶ Such measures should incorporate legal as well as practical measures to tackle racism and xenophobia as necessary *inter alia* to counter the spread of characterizations that migrants are inclined to crime, violence, drug abuse or disease.¹³⁷ States must also take measures to raise awareness amongst law enforcement officials, such as training for those first in contact with migrants.

145. Section 4 of Article 19 obligates State Parties to provide to migrant workers and their families equal or superior treatment than that of nationals with respect to housing. Section 4 provides that State Parties must:

secure for such [migrant] workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of [*inter alia*] . . . accommodation.

146. With a view to assisting and improving the legal, social and material position of migrant workers and their families, State Parties are required to guarantee certain minimum standards. States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.¹³⁸

147. Further, Section 4 of Article 19 requires States “to eliminate all legal and de facto discrimination concerning access to public and private housing for migrant workers.”¹³⁹ There must be no legal or de facto restrictions on home-buying,¹⁴⁰ access to subsidized housing or housing aids, such as loans or other allowances.¹⁴¹

148. Section 7 guarantees that, “the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article.” Under this paragraph, States must ensure that migrants have access to courts, to lawyers and to legal aid on the same conditions as their own nationals.¹⁴² This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19, including housing and protection from expulsion.¹⁴³

149. In this respect, the obligation to ensure access to legal redress for rights guaranteed under Article 19, read alone or in conjunction with Article E, including the rights of housing, requires Italy to provide legal remedy for raids and forced evictions of Roma and Sinti migrant workers and their families.

150. Article 19§8 prohibits expulsion where it has not been passed upon by a judicial authority with the effective right of appeal. Additionally, Article 19§8 requires that expulsion due to a “threat to security” be substantiated by not only a criminal conviction, but take into account accompanying behavior.¹⁴⁴ Article 19§8 states:

¹³⁶ Conclusions XIV-1, Greece, p. 366.

¹³⁷ Conclusions XV-1, Austria, p. 59.

¹³⁸ Conclusions 2006 Volume I, Italy, §273/282, 30 June 2006.

¹³⁹ Ibid.

¹⁴⁰ See Conclusions IV, Norway, p. 121.

¹⁴¹ Conclusions III, Italy, p. 92.

¹⁴² Conclusions I, Italy, Norway, Turkey, p. 86.

¹⁴³ Conclusions I, Germany, p. 217.

¹⁴⁴ Expulsion for offenses against public order or morality can only be in conformity with the Charter if they constitute a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals’ behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State.

The Parties undertake to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality.

151. Section 8 obligates States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.¹⁴⁵ However, very specific criteria govern the designation of a person as a threat to national security. It is entirely prohibited to designate an entire group as a threat to security. Within the Revised Charter, Article 19§1, alone or in conjunction with Article E, prohibits such a designation.

152. Further, even in cases where national security, public order or morality are at stake, States must ensure that foreign nationals served with expulsion orders have the effective right of appeal¹⁴⁶ to a court or other independent body. Consequently, Italy is in violation of Article 19, read alone or in conjunction with Article E.

5. Italy Violates Article 30, Read Alone or in Conjunction with Article E, on account of State Action leading to Dangerous Levels of Poverty and Social Exclusion, a Lack of an Overall and Coordinated Approach, and Exclusion of Roma and Sinti from Legal Status and Social Advantages

153. Article 30 The right to protection against poverty and social exclusion of the Revised Charter states:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

(a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

(b) to review these measures with a view to their adaptation if necessary.

154. Italy has failed to uphold its Article 30 obligations. The Italian Republic's actions have led to extreme poverty and social exclusion of Roma and Sinti. Additionally, Italy has failed to implement a coordinated approach to combat poverty and has systematically excluded Roma and Sinti from legal status and other social advantages.

155. The 2003 Conclusions state that, “[b]y introducing into the Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings.”¹⁴⁷ Article 30 creates State Party obligation to promote effective access to social assistance and housing as well as to other social advantages. To this end, Article 30 articulates this obligation as one requiring States Parties to adopt an overall and coordinated approach or framework outlining a set of priorities and measures to prevent and remove obstacles.¹⁴⁸ Article 30 additionally articulates State obligation to create

¹⁴⁵ Conclusions VI, Cyprus, p. 126.

¹⁴⁶ Conclusions XVII-2, Czech Republic, pp. 113-114.

¹⁴⁷ Conclusions 2003, France, p. 214.

¹⁴⁸ Conclusions 2003, Statement of Interpretation on Article 30.

monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.¹⁴⁹ Data, definitions and measuring methodologies should be developed and applied at the national level and reported upon.

156. The ECSR stated that access to social rights is assessed both based on the measures taken and the effectiveness of such measures.¹⁵⁰ One such measure is the provision of adequate resources, which is considered “one of the main elements of the overall strategy to fight social exclusion.” Article 30 compliance requires “necessary resources to be allocated to attain the objectives of the strategy.”¹⁵¹ Measures taken should be adequate in their quality and quantity with relationship to the nature and extent of poverty and social exclusion in the country concerned.¹⁵²

5.1 Poverty and Social Exclusion of Roma and Sinti

157. In its 2005 Conclusions (France), the Committee clarified that poverty meant “deprivation due to the lack of resources.” For the purposes of Article 30, the definition of poverty spans risk of poverty to severe, generational poverty. For Roma and Sinti living in Italian camps, each of these articulations apply. Long-standing conditions of poverty, segregation and inadequacy of housing¹⁵³ constitute violations of State obligations under Article 30.

158. Both *de facto* and *de jure* segregation in housing for Roma and Sinti perpetuate Roma and Sinti poverty and social exclusion. Described below as “frequently inhuman,” camps for Roma such as existed in Via Germagnano as of November 2007 are overcrowded, segregated and both lack access to towns and prevent access to social services. They lack security of tenure, structural soundness and safety from a sanitary and basic amenities perspective. They often lack heating, water and sanitation and fail to provide individual addresses to residents.

159. In a written response to Italy’s 15th Report submitted by States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, a coalition of advocacy and monitoring organisations, including COHRE, reported that many cities continue to isolate Roma into camps located on the periphery of towns, and in conditions of gross inadequacy.

160. Thus, for example, in the northern Italian town of Bolzano, those Sinti and Roma who do not live in the Castel Firmiano or Spaghettata camps – both isolated ghettos plagued by extreme environmental concerns (see below) – live in flats managed by the Provincial Institute for Social Housing (IPES). These camps are all concentrated in a single area of Bolzano. In two streets of the Don Bosco area, 31 families live within two streets: 15 in Via Cagliari and 16 in via Mozart. In an apartment building with ten apartments only two were not given to Sinti or Roma, thus producing small ghettos. The president of the IPES has stated that “the tendency is to concentrate them (Roma and Sinti) in a same building because this way it is easier to control them.”

¹⁴⁹ Ibid.

¹⁵⁰ Conclusions, Norway, p. 580.

¹⁵¹ Conclusions 2005, Slovenia, p. 674.

¹⁵² Conclusions 2003, Statement of Interpretation on Article 30, all countries.

¹⁵³ With reference to the Committee on Economic Social and Cultural Right’s General Comment No. 4 on Article 11 The right to adequate housing of the International Covenant on Economic, Social and Cultural Rights (ICESCR), granting that the right to adequate housing includes security of tenure, adequate facilities, affordability, habitability, accessibility and location. ICESCR, entry into force 3 Jan.1976, ratified by Italy 16 Sept. 1978.

161. Another example comes from Florence, where, between 2003 and 2005, the Florence administration built two “villages” for the Roma who until then had lived in the two shantytowns called Campo Masini and Poderaccio. Kosovo Roma and Ashkali¹⁵⁴ had lived there for years in substandard conditions, without health services, electricity and water. The two new villages, now called Poderaccio One and Poderaccio Two, about half a mile distant from each other, were built on small artificial hills, exactly where the old settlements had been, in a flood risk area; the Arno river once already overflowed its banks in the area, filling the land around where the villages stood in the past, and now stand again, with over three feet of water. The site is almost one mile away from the outskirts of the city and therefore far from shops and from bus stops. In the two villages, hosting about 35 families each, all the one-storey, single family wood homes are attached to each other in six rows, forming one ghetto in two parts, without shops, offices or any public facilities. No playground or parking lot was built, so that children have to amuse themselves playing in a muddy stretch below the villages amongst parked cars.¹⁵⁵

162. Segregation is carried out in some areas both by restricting the residents of camps from exiting, as well as preventing others from entering. In Naples, the formal Centro Lima Camp imposes barriers to free movement within camps. During a recent investigation, Superintendent researchers were refused entrance to the camp because they did not have formal permission from the “Civil Protection.” Residents must acquire formal permission to host visitors in their homes, and Roma living in the camp must surrender their passports to the Camp’s Superintendent while living at Centro Lima. After 9:00 pm no persons, including the residents, may enter or exit the camp.¹⁵⁶

163. Other localities have banned caravans from entering within their towns. In 2006, local authorities in the Commune of Castel Goffredo in the Province of Mantua passed an Ordinance (No 31/06) prohibiting all nomads from stopping with their trailers on the territory of the Castel Goffredo. After the Ordinance was passed, road signs indicating the prohibition were placed on all four roads that enter the town. On 26 November 2006, the Mayor of Castel Goffredo, Ms Anna Maria Cremonesi, was quoted in the Italian newspaper *Gazzetta di Mantova* as having stated, “[W]e placed road signs that forbid nomads from stopping in our towns because we want to defend honest, passive and unarmed citizens from people who live on thefts, begging and kidnapping of little children” Earlier, in 2005, *Sugar Drom* reported that in the town of Piovene Rocchette in the Province of Vicenza, Mayor Maurizio Colman passed a similar ordinance (No 128 of 12 August 2005), forbidding “nomads” from stopping with their caravans within the territory of the town. At the time of passing the Ordinance, members of the Northern League political party publicly supported the action of the Mayor.¹⁵⁷

164. The account of extreme poverty and grossly substandard conditions of Roma and Sinti in Italy, at paragraphs 98-104, *supra*, which COHRE reiterates incorporates by reference herein, also apply here as further evidence of Italy’s non-compliance with Article 30.

165. Italy’s de facto housing policies and toleration of de jure discrimination has lead to extreme poverty and social exclusion for Roma and Sinti in Italy. This represents a gross violation of Article 30, read alone or in conjunction with Article E.

¹⁵⁴ The Ashkali are an ethnic minority of Kosovo who speak Albanian. *See* <http://www.onpedia.com/encyclopedia/ashkali>, (14 Jan. 2009).

¹⁵⁵ Written Comments to CERD, pages 13 – 14.

¹⁵⁶ Coalition Report, *Security a la Italiana*, page 34.

¹⁵⁷ Written Comments to CERD, page 21.

5.2 Lack of an Overall and Coordinated Approach

166. Italy remains in violation of Article 30 on account of continued failure to promote access to social assistance and advantages for Roma and Sinti. In its 2003 Conclusions (Italy) the ECSR found that the Italy was lacking a framework on the national level to address its non-compliance with Article 30. The ECSR stated therein that it was necessary for the Italian government to create an interface between central, local and regional levels to double training resources, and create a monitoring body for laws affecting social exclusion.¹⁵⁸ The ECSR stated also that it wished to receive information on the implementation of policies, specifically:

It wishes to receive details on the composition and specific mandate of the Committee of Enquiry on Social Exclusion. It also requests to be informed of the progress made and especially of any studies or proposals made by this Committee. According to another source, the Committee was set up to verify the impact of the Government's social policy on poverty in Italy, to analyse new forms of social exclusion and to put forward proposals.¹⁵⁹

167. With its 2003 Conclusions (Italy) the Committee asked that the next report pay special attention to measures concerning justice, indebtedness and the most vulnerable groups and regions.¹⁶⁰ Then it stated that “[i]n the Committee's view housing is a critical policy area in fighting poverty and it is particularly interested to know what measures have been taken to ensure an appropriate location of (social) housing so as to avoid ghettoising poverty and social exclusion.”¹⁶¹

168. Subsequently, in its 2007 Conclusions (Italy, Article 30), the ECSR again requested that Italy “explain how the Government co-ordinates the efforts in the various policy fields in order to achieve the overall and co-ordinated approach required under Article 30 of the Revised Charter.” The ECSR further requested to be informed as to “not only how organisation and co-ordination take place in practice, but also how integration of the various measures is achieved in relation to the individual beneficiaries.”

169. The 2007 Conclusions (Italy, Article 30) states that, “[i]f replies to all the questions of the Committee are not included in the next report, there will be nothing to show that the situation in Italy is in conformity with Article 30 of the Revised Charter.”

170. Italy's failure to create and implement a national framework for addressing the social exclusion of Roma and Sinti has been addressed by other entities as well, including the Framework Convention for the Protection of National Minorities (Framework Convention), the United Nations Committee on the Elimination of Racial Discrimination (CERD) and the European Committee against Racial Intolerance (ECRI). Each has similarly commented on the need for Italian implementation of a national framework, as well as for Italy to submit such information. The Committee of Ministers noted in its 2006 Resolution on the Framework Convention for the Protection of National Minorities:

The lack of tangible progress in the integration of the Roma, Sinti and Travellers, the widespread discrimination they often face and the poor living conditions prevailing in many camps is a source of concern. A comprehensive strategy of integration at national and local level needs to be completed in consultation with those concerned. Legal guarantees at the state level for the Roma, Sinti and Travellers need to be developed so as to enable these persons to better preserve and

¹⁵⁸ 2003 Conclusions (Italy) Article 30, pages 100 - 101.

¹⁵⁹ *Ibid.*, page 101.

¹⁶⁰ 2003 Conclusions Italy Article 30, page 99.

¹⁶¹ *Ibid.*

further develop their identity and culture.¹⁶²

171. CERD, as monitoring body of the International Convention on the Elimination of All Forms of Racial Discrimination,¹⁶³ stated in its 2008 Concluding Observations on Italy that it:

[R]ecommends that the State party develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing, to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance. The Committee further recommends that it act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.¹⁶⁴

172. The ECRI stated in its third and most recent report on Italy:

In the absence national policy to improve the situation of Roma and Sinti, and combat the prejudice and discrimination they face, many members of these groups continue to live in a situation of marginalization and practical segregation from the rest of Italian society.¹⁶⁵

173. In contrast to Article 30 obligations to create and implement a coordinated approach to the situation of Roma and Sinti, Italian authorities have enacted so-called emergency security measures infected with racism and xenophobia. These measures, implemented under police powers and promoting illegal evictions and expulsions, and even illegal data collection, violate Roma and Sinti's rights under Article 30 read alone or in conjunction with Article E. These measures also signify not only Italy's failure to fulfill its obligations under Article 30, but also its failure to refrain from deliberate retrogressive measures.

174. It is not possible to know the exact details of actual evictions and expulsions due to the failure of the Italian authorities to keep and report such data. Public officials in Italy have given no indication of the ethnicity of the persons expelled. It is known that an approximate 15,000 Roma and Sinti reside in camps in Rome, and that plans to shut down these camps include alternate camps for only 4,000, a supply grossly inadequate to the demand. United Press International reported on 28 December 2007 that 500 persons had already been forced to leave Italy while another 1,200 were reportedly facing expulsion. A recent article by "Il sole 24 ore" stated that 510 persons had been banned from Italy, 181 of whom were expelled for "imperative security reasons."¹⁶⁶

175. Also alarming is the collection of data such as fingerprints in the absence of a coordinated approach to promoting housing and social benefits or legal protections. While it has been repeatedly requested that Italy collect data and monitor the situation of Roma in Italy, there is grave concern that its current strategy of police-implemented data collection serves only to aid in illegal expulsions and evictions of Roma. For example, the Pact for Security in Rome stipulates for 4,000 persons to be relocated to the periphery in camps, but leaves then leaves the fate of the remaining 10,000 Roma unspecified. Such fingerprinting is proposed to take place in tandem with the eviction of 85 identified Roma irregular camps. The Hammarberg Memorandum outlined proposals by the Ministry of Interior to undertake such action.

¹⁶² Res.CMN(2006)5, adopted by the Committee of Ministers, 4 June 2006, part 1(b) (emphasis added).

¹⁶³ New York, 7 Mar. 1966, entry into force 4 Jan. 1969, ratified by Italy 5 Jan. 1976.

¹⁶⁴ *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention*, Concluding Observations of CERD – Italy, CERD, 72nd session, 18 February-7 March 2008, para. 14 (emphasis added).

¹⁶⁵ ECRI Third Report on Italy, CRI(2006)19, adopted 16 Dec. 2005, made public 16 May 2006, Executive Summary, page 6.

¹⁶⁶ *Il Sole 24 Ore*, 29 December 2007, page 12.

The Minister informed the Commissioner that around Rome alone there were 85 irregular camps and affirmed the government's decision to close all irregular Roma camps, identifying, at the same time, their inhabitants through censuses carried out by the "Special Commissioners" who should be accompanied by members of the Red Cross.¹⁶⁷

176. As a result, increased poverty and social exclusion flow from the recent deliberate retrogression in Italian law. In Rome, Roma have faced constant forced eviction from their homes and the necessity to rebuild unauthorised camps in new areas. For example, on 6 October 2008 AKI reported that forty five families previously settled, then expelled and thereby forced to live in unauthorized areas such as parking lots, and then further, expelled from the parking lots. The 'Via Salamanca' camp located in the Tor Vergata area on the southeastern outskirts of Rome, was established in June after its inhabitants were kicked out of the central Campo Boario and northern Saxa Rubra camps. The camp housed 120 people, approximately 40 of them children.

177. Italy's failure to implement a coordinated approach in response to the discrimination suffered by Roma and Sinti represents a failure to uphold its Charter obligations under Article 30, read alone or in conjunction with Article E.

5.3 Exclusion from Legal Status and Social Advantages

178. For Roma in Italy, unlawful and disparate exclusion from legal status factors heavily into a vicious cycle of poverty and social exclusion. At minimum, Article 30 requires that Italy refrain from measures arbitrarily denying or creating disparate obstacles to gaining or retaining legal status. Such measures correspondingly prevent access to employment, housing, training, education, culture and social and medical assistance.¹⁶⁸

179. The Committee of Ministers stated that for persons "accustomed to following an itinerate way of life," Member States should take all necessary measures to establish a link to the state, to institute measures to reduce the total number of stateless persons, to permit them residence and movement, and to give effect to the principle of non-discrimination.¹⁶⁹

180. The ECRI Third Report (Italy) General Policy Recommendation No. 7 on National Legislation to combat Racism and Racial Discrimination (13/12/2002) called on the Italian government to enhance transparency and ensure that naturalization determinations occur within a reasonable timeframe, and that delays that are not imputable to the applicant party do not negatively affect progress of the application. The ECRI Third Report (Italy) also included Recommendation No. 23, to provide even those without legal status translation and

¹⁶⁷ Hammarberg Memorandum, CommDH(2008)18, para. 30.

¹⁶⁸ The relationship between poverty and social exclusion and access to a legal identity has recently been discussed by the Commission on Legal Empowerment of the Poor in its Report *Making the Law Work for Everyone*, co-published by the United Nations Development Programme, Volume I, 2008. It explains that the understanding that "[e]veryone has the right to be recognized before the law is one of the most central human rights. The state is thus under the obligation to give formal, legal recognition that a person exists. Legal empowerment requires an affordable document with which the bearer can prove his or her identity. Without such proof of their legal identity the poor, in particular, are often excluded from the formal protections of the state legal system and as beneficiaries of public goods and services" (pages 27, 28). The Report additionally states that legal identity is the cornerstone of access to justice (page 61).

¹⁶⁹ Recommendation No. R (83) 1, "Stateless Nomads and Nomads of Undetermined Nationality", adopted by the Council of Europe, Committee of Ministers, 22 Feb. 1983.

interpretation, as well as legal aid.

181. Lack of legal status arises from segregated and inadequate living situations. Because camps are not considered “housing,” not even as a temporary housing solution, Roma and Sinti residing in these camps are barred from registering for social housing, which operates on a point-system and requires specification of current housing. Therefore, Roma and Sinti persons victimized by segregation and the resultant denial of legal status are excluded from standard forms of social and State assistance. Lack of proper legal status creates obstacles to accessing social assistance, which in turn increases the risk of poverty and perpetuates generational poverty. The ECSR in its 2007 Conclusions (Italy) stated:

The Committee notes the information on the risk of poverty before and after social transfers. In particular it notes from the NAP [National Action Plan on Poverty and Social Exclusion 2003-2005¹⁷⁰] that of all social transfers, pensions have an impact of absolute relevance on the risk of poverty. Other transfers are much less developed in Italy as well as less shaped by a means-testing kind of logic. The Committee notes from Eurostat that at risk of poverty rate before social transfers (with pensions included in social transfers) amounted to 45% in 2004 and 43% in 2005. The same indicator with pensions excluded from social transfers was 23% and 24% respectively.

182. Though a residence permit or Italian citizenship is not necessary to obtaining urgent hospital care, these persons cannot join the state health insurance on an equal footing with other persons. Without a residence permit or Italian citizenship, persons cannot enroll in the national health care service, and therefore cannot obtain a family doctor or pediatrician, vaccinations, or affordable health tests.

183. Exclusion from public medical assistance means that many Roma and Sinti are born without being given a birth certificate.¹⁷¹ Included among resultant obstacles is the resulting inability to register vehicles or be legally employed.¹⁷²

184. Italy ratified the Convention on the Rights of the Child on 5 September 1991. Article 7 of that Convention requires that::

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.¹⁷³

185. Article 27 of the Convention on the Rights of the Child requires State Parties to:

- (3) Take appropriate measures to assist parents and other responsible for the child to implement the right to an adequate standard of living, and: in case of need [to] provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.

186. Similarly, Article 24 of the International Covenant on Civil and Political Rights, which Italy

¹⁷⁰ As stated in the introduction, “[t]he prime objectives identified by the European Union and shared by the Italian government are the fight against poverty, integration into the job market and support for the more vulnerable groups.”

¹⁷¹ Institute for Human Rights, *supra*, page 185.

¹⁷² See Written Comments of the ERRC et. al Concerning Italy for consideration by United Nations CERD at its 72nd session, page 28 - 29.

¹⁷³ Convention on the Rights of the Child, entry into force 2 September 1990, ratified by Italy 5 Oct. 1991.

ratified on 15 December 1978, requires that:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.¹⁷⁴

187. As the ECRI Third Report states, the lack of a residence permit adversely affects a child's ability to attend school:

In its second report, ECRI urged the Italian authorities to address the Roma and Sinti's lack of documents, including Italian passports and residence permits. ECRI has continued to receive reports according to which many Roma and Sinti born in Italy or who have lived in Italy most of their lives, and their children, do not have Italian citizenship. In many cases, these persons only have short-term residence permits and in some cases no residence permits at all. ECRI has also received reports that a few hundred stateless Roma children currently live in Italy.¹⁷⁵

188. Commissioner Hammarberg reached a similar conclusion, expressing particular concern with "the fate of children living in bad conditions" in camps. He stated that though they may sometimes possess a formal right to education, no such effective enjoyment is likely under such living conditions.¹⁷⁶ He also cited the lack of identification documents as negatively at play. The ECRI Third Report on Italy noted that Italy has not developed policies to ease the burden of immigrants - especially children - to gain legal status.¹⁷⁷

189. Italy's exclusion of Sinti and Roma from social and legal advantages represents Article 30 violations, read alone or in conjunction with Article E.

V. CONCLUSIONS

1. For all the foregoing reasons, COHRE respectfully requests that the ECSR find Italy in violation of Article 31 §§ 1, 2 and 3, as well as Article 16 and Article 30 of the Revised Charter, read alone or in conjunction with Article E, as well as in violation of Article 19 §§ 1, 4, 7 and 8. COHRE respectfully urges that Italian authorities undertake the following measures to bring about compliance with the Revised Charter:
2. Without delay, repeal all legislation and policies negatively impacting Roma, "nomads" or immigrants, including the:
 - a. Pacts for Security adopted in Naples, Rome, Milan, Firenze, Torino, Genova, Bologna, Catania, Bari, Cagliari, Venezia, Modena, Prato and Trieste;
 - b. Emergency Decree No 92/2008, defining the presence of the Roma in the areas of Campania, Lazio, and Lombardia as a cause of great social alarm with possible grave repercussions in terms of public order and safety.

¹⁷⁴ International Covenant on Civil and Political Rights, entry into force 23 March, 1976, ratified by Italy 15 December 1978.

¹⁷⁵ CRI, para. 96.

¹⁷⁶ CommDH(2008)18, para. 37.

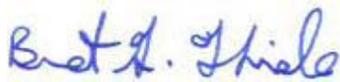
¹⁷⁷ ECRI Third Report (Italy), page 7 – 8, paras. 4 - 5.

- c. Ordinance of the President of the Council of Ministers No. 3678 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Campania region;
 - d. Ordinance of the President of the Council of Ministers no. 3677 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lombardia region;
 - e. Ordinance of the President of the Council of Ministers No. 3676 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lazio region;
 - f. Initiative of Minister of Interior Roberto Maroni to perform a census of Roma living in Italy, including through fingerprinting, which additionally violates data protection laws;
3. Prohibit forced eviction in law and practice and place a moratorium on all other evictions until legal protection mechanisms are in place and accessible to all including Roma and Sinti as well as refrain from any evictions leading to homelessness; Publicly condemn attacks on Roma and Sinti and ensure thorough and effective investigation and prosecution of perpetrators;
 4. Without delay, end all forms of racial segregation in the field of housing;
 5. Investigate all alleged cases of police abuse and ill-treatment of Roma and Sinti and ensure that the officers concerned are held legally responsible and receive appropriate discipline; ensure that victims of police abuse obtain appropriate remedy; additionally, ensure that victims obtain appropriate redress in cases of failure on the part of authorities to provide protection from non-State actors;
 6. Challenge negative representations of Roma and Sinti in the media; implement an anti-racism campaign and issue penalties and fines for racist speech within political parties, especially at high levels of authority; undertake positive imaging of Roma as contributors to culture and society; recognize Roma as a minority;
 7. Condemn, via the National Office Against Racial Discrimination (UNAR), Italy's national equality body, recent developments involving racial discrimination and xenophobia in Italy and undertake all actions within its power to address these acts of discrimination against Roma and Sinti; empower UNAR with the capacity to obtain legal redress for discrimination in the Italian judicial system under free-standing and actionable discrimination claims as well as collective complaints;
 8. Ratify Protocol No. 12 to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 177, to secure non-discrimination in the application of rights and in the enforcement of existing domestic anti-discrimination laws;
 9. Ensure that Roma and Sinti enjoy rights to family life, home, privacy and dignity by ending raids associated with data collection, including the seizure of papers, fingerprinting and other targeted identification collection techniques;
 10. Implement immediately the recommendations given in European Parliament resolution on application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, EP

reference number B6-0462/2007 / P6-TA-PROV(2007)0534, adopted 15 November 2007;

11. Without delay, ensure that all cases of de jure or de facto statelessness occurring among Roma on the territory of Italy are resolved; ensure that all Roma entitled to a durable residence status who have not yet been provided with such status are provided with durable residence status without delay; facilitate access to residence status for persons lacking residence status, but where the goods of justice, non-discrimination, and/or social inclusion would so recommend or require;
12. Adopt, in consultation with Romani representatives, a comprehensive national strategy for improving the situation of Roma in Italy with regard to obtaining legal status and appropriate social benefits such as effective access to housing, education, healthcare and legal remedy; increase transparency and remove discretion from legal documentation and residency procedures; simplify and make accessible application procedures;
13. As necessary to properly implement a national strategy at the local level, include in such strategy details specifying: resource allocation; administrative roles and duties; timeframe and steps for measurable progress.

Respectively submitted,



Bret G. Thiele
Coordinator
Litigation Programme
Centre on Housing Rights and Evictions (COHRE)