



UPR Submission

**Italy**

September 2009

## **Summary**

This submission highlights a number of key areas of concern regarding Italy's compliance with its international human rights obligations. They concern counter-terrorism policies that violate the absolute prohibition on returns to risk of torture and ill-treatment; abusive interceptions of boat migrants and their summary expulsion to Libya in violation of the right to seek asylum and non-refoulement; and racism and violence against migrants and Roma.

The Italian government has pursued policies in the context of its efforts to fight terrorism and to counter irregular immigration that seriously undermine fundamental rights. Italy's aggressive policy of ordering the expulsion of terrorism suspects violates the right to protection against returns to the risk of torture, while its insistence on seeking unreliable diplomatic assurances from Tunisia to effect such returns undermines the absolute prohibition on torture. As part of its efforts to interdict irregular migrants, Italy implemented in May 2009 a policy of intercepting boat migrants in international waters and summarily returning them to Libya without any screening to identify those in need of protection, in violation of the right to seek asylum and Italy's nonrefoulement obligation.

These policies both reflect and exacerbate a deeply disturbing climate of racism and xenophobia in today's Italy. Shocking incidents of violence, including murders, directed against migrants and against Roma and Sinti (many of whom are Italian citizens), have not been accompanied by an effective response from the government. Instead the government's public rhetoric and policies have tended to equate "foreigners" with "criminals." Recent legislative reforms have made undocumented entry and stay in Italy a criminal offense, and undocumented status is now an aggravating circumstance in the commission of any crime, leading to longer prison sentences.

## **Returns to Risk of Torture and Use of Diplomatic Assurances**

In recent years, Italy has pursued an aggressive policy of national security expulsions without regard for its international human rights obligations. According to recent information provided to the European Commission, Italy ordered 51 terrorism-related expulsions between 2003 and 2007. The government has indicated that it considers expulsion to be a flexible and effective preventive tool in cases where an individual identified as a security risk cannot be prosecuted.

A 2005 law, adopted following the terrorist attacks in London in July of that year, explicitly denies the right to an in-country appeal to those subjected to expulsion on national security grounds. Law 155 of 31 July 2005 (known as the "Pisanu Law" for then-Interior Minister Giuseppe Pisanu) gives the Interior Minister and, upon delegation, prefects (the chief administrative representative of the central government at the provincial level) the authority to order an immediate expulsion when there are "valid reasons to believe that [the individual's] stay on national territory could in some way facilitate terrorist organizations or activities, including international ones." The appeal against an expulsion order under the Pisanu Law does not have suspensive effect even where fears of torture or other abuse on return are raised.

In May 2007, the UN Committee against Torture expressed its concerns "at the immediate enforcement of these expulsion orders, without any judicial review, and...that this expulsion procedure lacks effective protection against refoulement."

The lack of an effective domestic remedy has led to the filing of numerous complaints to the European Court of Human Rights. The Court requested interim measures in over 29 instances against Italy to suspend forced returns in the period between 2003 and 2008. Since 2008, the Court has ruled against Italy in twelve cases involving plans to expel Tunisian national security suspects to their country of origin on the basis of diplomatic assurances against torture and ill-treatment. In all these cases the Court found that return to Tunisia would violate Italy's nonrefoulement obligations under article 3 of the European Convention on Human Rights. Several more cases are pending.

Italy has shown contempt for the European system of human rights protection by ignoring on three occasions binding requests from the European Court of Human Rights to stay expulsions. Tunisians Essid Sami Ben Khemais and Mourad Trabelsi were expelled to their country of origin in June and December 2008, respectively, and Ali Ben Sassi Toumi was expelled in August 2009. In the case of Ben Khemais, the European Court ruled in February 2009 that Italy had violated both article 3 and article 34 of the European Convention (ensuring the effective right of application to the Court for remedy).

Italy's repeated attempts to return individuals to Tunisia demonstrate a disturbing willingness to undermine the global ban on torture. In at least eleven cases the Italian government has sought and obtained diplomatic assurances against

torture and ill-treatment from Tunisian authorities. In the seminal case of *Saadi v. Italy* at the European Court of Human Rights, the Italian government argued that in national security cases, the risk that a person will be subject to cruel, inhuman or degrading treatment or punishment should be balanced against the risk to national security that the person is alleged to pose. The Grand Chamber of the Court rejected this argument and reaffirmed in its February 2008 decision the absolute prohibition on returns to risk of torture and ill-treatment. The Court has consistently rejected diplomatic assurances from Tunisia as insufficient to obviate the risk to returnees.

### **Interdictions at Sea**

On May 6, 2009, Italy began unilaterally interdicting boat migrants on the high seas and returning them summarily to Libya. No screening was conducted to identify refugees, the sick or injured, pregnant women, unaccompanied children, victims of trafficking, or victims of violence against women. All the migrants were detained upon arrival in Libya. A week later, Libya and Italy announced the beginning of joint naval patrols in Libyan territorial waters. In the first weeks after the interdiction program began, about 500 boat migrants were summarily returned to Libya, and there was a dramatic curtailment in the number of boats even known to have attempted the journey from Libya to Europe.

Summary pushbacks to Libya without screening for those in need of protection violate Italy's duty to ensure the right to seek asylum under the 1951 Refugee Convention, as well as the nonrefoulement obligations under the Refugee Convention, the Convention against Torture, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The UNHCR has expressed serious concerns that Italy's interdiction policy "in the absence of adequate safeguards, can prevent access to asylum and undermines the principle of non-refoulement."

There are credible reports that Italian officials used undue force during the interdiction operations, as well as confiscating, and not returning, the personal property of migrants, including money, mobile phones, passports, and refugee certificates. In interviews with 82 migrants who had been returned to Libya, the UNHCR gathered what it called "disturbing accounts" that Italian personnel used force when transferring boat migrants from the Italian ship to a Libyan vessel, leading to six people being hospitalized. Human Rights Watch learned from another source that Italian personnel used electric-shock batons and clubs to force migrants off the boat, and that some of the passengers had to have lacerations on their heads stitched even before leaving the Italian vessel.

### **Racism, Xenophobia and Violence against Migrants, Roma and Sinti**

Racism and xenophobia towards migrants, Roma and Sinti, characterized by violence as well as offensive political discourse, is a serious problem in Italy. Hostility against migrants and Roma has been sparked in part by several high

profile crimes attributed to foreigners or Roma. The response has been a wave of attacks targeting those communities. Recent incidents have included attacks on Roma settlements, including arson (May 2008), the beating to death of an Italian of African descent (September 2008), the beating and lighting on fire of an Indian immigrant (February 2009), and an attack by a large group of club-wielding men on four Romanians, two of whom required hospitalization (February 2009).

The response of the Italian government has exacerbated the climate of racism and xenophobia. Elected officials, both at the local and national level, have used inflammatory rhetoric, including a statement from the Prime Minister that Italy is not and should not be a multiethnic society, while policy and legislative action has reinforced a linkage between "foreigners" and crime generally. Italy's president Giorgio Napolitano has expressed concern over an increase in xenophobic public discourse in Italy.

The government has adopted several emergency decrees with immediate application (some of which were subsequently submitted to parliamentary review and modification) targeting migrants and Roma, and stoking public panic. In May 2008, after the firebomb attacks on several informal Roma settlements, the government declared a state of emergency for "nomad communities" (Roma) in the Campania, Lazio, and Lombardy regions, giving local authorities special powers including to conduct censuses and to raid and dismantle informal Roma settlements. Police raids followed. In July 2008, the government extended a state of emergency in relation to undocumented migration from three regions (Puglia, Calabria and Sicily) to the entire country.

Among the most alarming developments has been the proliferation of vigilante groups and mob violence. Rather than discourage vigilante action, the Government of Prime Minister Berlusconi has officially sanctioned vigilante groups, first through an emergency decree, and then through Law 94 of July 2009 (the so-called "Security Package.") The law created a national framework for "citizen's groups," and regulations adopted in early August 2009 provide general guidelines with respect to membership and responsibilities. Given the climate of hostility against migrants and Roma, and the government's equivalence of "foreigners" and "criminals," the authorization of vigilante groups across Italy creates a real of risk of what would be state-sanctioned violence against migrants and Roma.

In addition to authorizing nationally the creation of vigilante groups, Law 94/2009 makes undocumented entry and stay in Italy a criminal offense punishable by a fine of up to 10,000 euros. Under Italian law, all public officials are required to report criminal conduct, leading to concerns that public health and education officials, as well as others, may report undocumented migrants who seek medical attention or other services they are entitled to receive under Italian law irrespective of their status. The government had in 2008 already made undocumented stay in Italy an aggravating circumstance for the purposes of sentencing following a criminal conviction. Undocumented migrants are now

liable to up to one-third longer prison sentences than citizens and legal residents convicted for the same crime.

Progress in fighting discrimination has been marred by incomplete measures and setbacks. The Italian government created the National Office against Racial Discrimination (UNAR) in 2004, but the office does not have legal standing to litigate on behalf of victims. And while a 2008 law shifted the burden of proof from the complainant to the respondent in cases of prima facie discrimination, a law passed in 2006 reduced sentences for instigation to discrimination or violence on racial, ethnic, national or religious grounds.

## **Recommendations**

*Regarding returns to the risk of torture, the Italian government should be urged to:*

- Amend Law 144 of 2005 to provide an automatic in-country appeal against expulsion orders where the individual alleges a risk of torture or ill-treatment; and
- Cease reliance on diplomatic assurances against torture and ill-treatment as a means of removing foreign terrorism suspects at risk of such treatment on return.

*Regarding abusive interdictions and summary returns of migrants, the Italian government should be urged to:*

- Cease immediately interdictions and summary returns of boat migrants to Libya;
- Ensure that persons interdicted have access to a fair procedure for determining protection needs, including asylum and subsidiary protection;
- Launch an investigation into allegations that Italian naval personnel beat and used electric shocks to force interdicted boat migrants onto Libyan vessels, and confiscated and failed to return personal property of migrants, including refugee certificates and passports, and prosecute naval or coast guard officials who abused their authority, including those with command responsibility, and;
- Stop cooperating with the Libyan authorities on the interdiction and interception of third-country nationals trying to leave Libya.

*Regarding racism, xenophobia and violence against migrants and Roma, the Italian government should be urged to:*

- Repeal the provision in Law 94 of 2009 authorizing citizens' groups as well as the Interior Ministry regulations for such groups, and disband all such groups;
- Repeal the provision of Law 94 of 2009 that criminalizes irregular entry and stay in Italy;
- Take firm and consistent action, including criminal prosecution when appropriate, against all unauthorized vigilante groups;

- Ensure that attacks by on migrants, Roma and other ethnic minorities are promptly investigated by the police and those responsible are brought to justice;
- Ensure the National Office against Racial Discrimination is granted the legal framework and budget to allow it to initiate and participate in litigation on behalf of victims of discrimination, and;
- Condemn forcefully and consistently all racist and xenophobic statements, especially by public and elected officials, and make clear that racist discourse has no place in Italian society.