



**MEMORANDUM TO THE EUROPEAN COMMISSION**

**VIOLATIONS OF EC LAW AND THE FUNDAMENTAL RIGHTS OF ROMA AND SINTI BY THE ITALIAN GOVERNMENT IN THE IMPLEMENTATION OF THE CENSUS IN “NOMAD CAMPS”**

**4 MAY 2009**

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## INTRODUCTION

*“I felt humiliated as an Italian citizen. We are Gypsies and not like other Italian citizens – I was imprisoned in many fascist concentration camps, and the police now treated me in this way!”*

1. This memorandum to the European Commission, DG Employment and Social Affairs (DG EMPL) and DG Freedom, Security and Justice (DG JLS), is jointly submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (the Justice Initiative) and osservAzione.
2. On 21 May 2008, the Italian Government adopted an Emergency Decree (“Nomad Emergency Decree”) proclaiming a state of emergency and enacting a series of measures targeting Roma and Sinti individuals, directly or indirectly. These measures were accompanied by racist political statements which suggested that Roma were criminals or should be expelled from Italy and that all Roma camps were to be closed down.<sup>1</sup> Using presidential decrees (DPCM decrees) and implementing orders, the Government conducted a census of all Roma in the regions concerned. At the same time there have been widespread physical attacks by civilians, which the government has failed to prevent or condemn.
3. The legal measures adopted under the “Emergency Measures” (the Nomad Emergency Decree the three Implementing Orders of 30 May 2008 and the Implementing Guidelines of 17 July 2008) allow for the collection of personal data, fingerprints and photographs of Roma living in unofficial settlements, allowing the creation of a “Roma database”. The government initially stated that this database would be used in order to expel certain categories of Roma from Italy, and expulsions have taken place. More recently the government claims that the purpose of the information is to improve the living conditions of Roma, although no measures have yet been introduced to do so.
4. European history demonstrates the dangers of building a dossier that can be used to target, stigmatise or ultimately ‘cleanse’ a particular ethnic group from a country. European law has developed in response to that threat to prohibit the processing of such sensitive data unless the Government can justify the need for it.
5. Since the proclamation of the Emergency Measures the ERRC, the Justice Initiative and osservAzione have continuously monitored the implementation of the Declaration and its implementing ordinances, and especially the “census” conducted in so-called “camps for nomads” by government authorities.
6. In particular, since October 2008, ERRC researchers have observed the implementation of the census in Roma camps in Rome and have conducted interviews with Romani and Sinti individuals in camps in which the census had already been conducted in Rome, Milan and Naples, as well as with members of the Italian Red Cross and Italian activists in Rome. In addition, the ERRC has undertaken documentation of a census recently conducted in the region of Veneto, apparently under orders from the Ministry of Interior, but not specifically linked to the Nomad Emergency Decree.
7. The present memorandum is based on the primary documentation undertaken by the ERRC in formal and semi-formal camps for Roma and Sinti in Rome, Milan, Naples and the Region of Veneto, and the continuous informal information gathering and sharing of osservAzione. The

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<sup>1</sup> “Campi rom, la stretta di Maroni ‘Basta illegalità, li chiudiamo tutti’”, *La Repubblica*, 17 June 2008, available at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2008/06/17/campi-rom-la-stretta-di-maroni-basta.html>, accessed April 24, 2009.

camps in which the ERRC collected primary documentation in preparation for this memorandum include:

- Rome: Camp Via Salviati 1, Camp Via Salviati 2, Camp Via Tenuta Piccirilli, Camp Casilino 900, Camp Tor de Cenci, Camp Tor di Quinto-Baiardo and Camp Lombroso;
  - Milan: Camp Via Impastato, Camp Via Triboniano Area 1, Camp Via Triboniano Area 4, Camp Via Idro and Camp Bacula;
  - Naples: Scampia settlement, incorporating Camp Via Cupa Perillo – Centrale del Latte, Camp Baracche Rosa via Cupa Perillo and Camp Rotonda B Lato Sinistro; and
  - Region of Veneto: Verona – Camp Via La Rizza.
8. The findings of this research are accompanied by a legal analysis conducted by the Justice Initiative concerning violations of both the EC Racial Equality Directive<sup>2</sup> and the EC Data Protection Directive<sup>3</sup> together with violations of fundamental rights protected in the ECHR arising from the adoption and implementation of the Emergency Measures.
9. The ERRC, the Justice Initiative and osservAzione submit this joint memorandum to the European Commission (EC) to assist the Commission in conducting an assessment of the impact of the Emergency Measures and the resulting census in Italy's nomad camps upon the enjoyment of fundamental human rights by the Roma and Sinti living in the camps. We specifically aim to support the Commission in undertaking the commencement of proceedings against the Italian Government for infringement of fundamental rights enshrined in the EC Racial Equality Directive and the EC Data Protection Directive.
10. We submit that the Emergency Laws violate European Community (EC) law as well as European fundamental rights law for the following reasons:
- *Data Protection Directive: Processing of sensitive ethnic data.* The collection and processing of individualised sensitive information about only Roma and Sinti reveal ethnic origin in breach of Article 8(1) of the EC Data Protection Directive and without the informed consent or the medical necessity that are needed to justify such an intrusion in Article 8(2).
  - *Fundamental Rights: The Conduct of the Census.* The census was characterised by the unnecessary, intimidating and unlawful involvement of the police and the military, in violation of the right to respect for private life and home, in breach of Article 8 ECHR.
  - *Racial Discrimination.* The Emergency Measures and the manner of their implementation amount to discrimination against the Roma and Sinti minority group whose mere presence has been singled out and designated as the cause of an emergency situation and target of emergency state action, in breach of Article 2 and Article 3(1)(h) of the EC Racial Equality Directive, as well as Article 8 ECHR with Article 14 ECHR, and is such blatant discrimination as to amount to an affront to human dignity, reaching a level of severity that amounts to degrading treatment in violation of Article 3 ECHR.

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<sup>2</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Available at: [http://europa.eu/eur-lex/pri/en/oj/dat/2000/l\\_180/l\\_18020000719en00220026.pdf](http://europa.eu/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf).

<sup>3</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:NOT>.

## FACTUAL SUMMARY

### The “Declaration of the state of emergency” and its implementing orders

11. The April 2008 general elections were won by *Forza Italia*, headed by Silvio Berlusconi, whose coalition partners included the anti-immigrant Northern League and the National Alliance party. The new government was constituted in May 2008. Mr Roberto Maroni of the Northern League was appointed Minister of Interior. The National Alliance, a party formed as a successor to Mussolini's Fascists, 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, stemming back to November 2007 when anti-Romani actions last flared up in Italy.<sup>4</sup>
12. The current government has capitalised on Italians' fears about “Gypsies,” immigrants and security, and specifically fuels already harshly negative sentiment with constant anti-Romani messages widely published in the media. On 11 May 2008, Minister of Interior Roberto Maroni was quoted in *La Repubblica* as having stated that all abusive Romani camps would have to be dismantled right away, and that the inhabitants would be either expelled or incarcerated.<sup>5</sup>
13. In a meeting in Naples on 21 May 2008, the Italian Government adopted its “Declaration of the state of emergency with regard to settlements of nomad communities in the territories of Campania, Lazio and Lombardia regions”<sup>6</sup> (“Nomad Emergency Decree”), defining the presence of “nomads” in the areas of Campania, Lazio and Lombardia as the cause of great social alarm with potentially grave consequences for public order and security, and declaring a state of emergency until 31 May 2009. The Decree singles out and is directed primarily against “nomadic communities”. The Preamble of the Decree states:

“Considering the extremely critical situation that has developed in the territory of the Lombardia 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; ... 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 [...]”

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<sup>4</sup> At that time, the ERRC sent a letter to the Prosecutor of Rome, Italy's National Office Against Discrimination, General Prosecutor and Journalists Order, requesting that each office open an investigation into hate speech by Mr Fini who had publicly remarked that Roma considered “theft to be virtually legitimate and not immoral” and felt the same way about “not working because it has to be the women who do so, often by prostituting themselves.” Mr Fini was also quoted as having claimed that Roma “have no scruples about kidnapping children or having children [of their own] for purposes of begging.” There has been no response to the ERRC letter since that time. For more information, see:

<http://www.errc.org/db/02/84/m00000284.pdf>. At a founding congress in Rome on 27-29 March 2009, the new Italian centre-right party called “People of Freedom” was born. The party merges of former National Alliance and the Forza Italia. Mr Berlusconi was elected President of the new party.

<sup>5</sup> Milella, Liana. “Maroni confirms the hard line against the landings and the Roma” (“Maroni conferma la linea dura contro gli sbarchi e i rom”), *La Repubblica*, 11 May 2008.

<http://www.repubblica.it/2007/12/sezioni/cronaca/sicurezza-politica-2/maroni-andremo-avanti/maroni-andremo-avanti.html>. Two days later on 13 May, a mob of approximately 60 people razed a Romani camp in Naples with Molotov cocktails. For more information, see: <http://www.errc.org/cikk.php?cikk=2953=#ERRC>.

<sup>6</sup> Published in the Official Gazette No 122 of 26 May 2009.

14. On 30 May 2008, the President of the Council of Ministers adopted three separate Presidential Ordinances (“Implementing Orders”) implementing the above decree for the Regions of Lombardia, Lazio and Campania.<sup>7</sup> By virtue of these Implementing Orders, the prefects of Rome, Milan and Naples, under the auspices of the Minister of Interior, are appointed as Commissioners responsible for carrying out the necessary interventions and work that so called “emergency” requires in their respective regions. Crucially, the Implementing Orders state that they receive these powers “derogating from the rules of law in force.” The specific powers apparently include the monitoring of formal and informal camps, identification and census of the people (including minors) who are present there, and taking photos (mug shots); the expulsion and removal of persons with irregular status; measures aimed at clearing “camps for nomads” and evicting their inhabitants; as well as the opening of new “camps for nomads.” While the Implementing Order purports to permit actions outside the ordinary legal process, no derogation from the European Convention on Human Rights has been communicated to the Secretary General of the Council of Europe informing him of the introduction of derogating measures and the reasons for them (see paras 119-123 below).
15. Within weeks of having been sworn in, Prime Minister Berlusconi’s government undertook a range of acts which by their very nature discriminate against Italian and non-Italian Roma and Sinti, and which are fundamentally averse to improving relations between Roma and non-Roma at the local level. It is in this political and legal climate that the Emergency Measures included in the Nomad Emergency Decree and its implementing orders, together with their implementation in camps for Roma and Sinti must be considered.
16. Following an exchange of correspondence with the European Commission, on 17 July 2008 the Italian Government issued “Guidelines to implement the President’s Orders nos. 3676, 3677 and 3678 of 30 May 2008 concerning the encampments of nomadic communities in the regions of Campania, Lazio and Lombardia” (“Implementing Guidelines”). The Guidelines provide that the operations of the Prefects shall not target specific groups or individuals, but rather all people living in illegal and legal encampments, regardless of their nationality, ethnicity and religion. As the next section below demonstrates, these putatively “neutral” actions have in fact targeted Roma and Sinti: According to public information the census has thus far been conducted in camps for nomads which are inhabited almost exclusively by Roma and Sinti, a fact that has been confirmed by ERRC research.
17. On 5 February 2009, the Italian Senate approved draft Law No. 733, one of the legislative provisions contained in the so-called “security package” which also includes the Decree of 21 May 2008. The draft Law is now pending before the Chamber of Deputies for approval. If adopted as is, the measures will affect Roma and Sinti, immigrants and the homeless. According to ERRC documentation, on 17 February 2009, the Association of Italian Sinti organised a demonstration in Milan calling for the abolition of several articles from the law because they believe that the articles may be used as a basis for the creation of a special

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<sup>7</sup> 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; 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 Lombardy region; 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.

registry for people who do not live in ordinary housing and will prevent those living in caravans from obtaining identification documents.<sup>8</sup>

### **Factual Profile of Violations of EU Race Equality Directive 2000/43/EC**

#### Who is a “nomad” and the profile of the “campi nomadi”

18. According to information made public by the Italian Government, there are approximately 150,000 Roma and Sinti living in Italy.<sup>9</sup> About half of all Roma and Sinti in Italy are Italian citizens. It is estimated that 20-25% are from other EU member states (chiefly Romania) and the rest are either from non-EU states or they are stateless (mostly from the territory of the former Yugoslavia).<sup>10</sup>
19. At the centre of this discussion lies the fundamental meaning of the term “nomad” in its official usage by Italian governmental authorities. Underpinning the Italian Government’s approach to Roma and Sinti is the belief that all Roma and Sinti are “nomads.” In their communication with intergovernmental bodies and human rights treaty monitoring bodies, Italian authorities have consistently referred to Roma and Sinti as “nomads,” regardless of their settled status. During the 1999 review of Italy’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, the head of the Italian delegation, Mr Luigi Citarella, told members of the CERD that as “natural nomads,” Gypsies “preferred to stay in their camps.”<sup>11</sup> In its 2008 State Report for the CERD’s most recent review of Italy, the Italian Government explicitly stated that Romani populations are “characterized in all cases by nomadism [...]”<sup>12</sup> In a report issued in 2009, the Organization for Security and Cooperation in Europe (OSCE) confirmed, “In line with OSCE practice, this report uses the term ‘Roma and Sinti’ to describe the population that in official Italian documents are commonly referred to ‘nomadi’, or nomads.”<sup>13</sup> In its 2006 *Concluding Observations* the UN Human Rights Committee addressed the issue of the use by the Italian authorities of the term ‘nomads’ for the Roma population and called its use into question:
  - “21. The Committee is concerned by the State party’s policy to consider Roma as ‘nomads’ as well as its camp-based policy towards them. It expresses concern about widespread reports that the Roma population is living in poor, unhygienic housing conditions on the margins of Italian society (arts. 12 and 26).
  22. The State party, in consultation with the Roma, should reconsider its policy towards this community, put an end to their residential segregation, and develop programmes to ensure their full participation in mainstream society at all levels.”
20. Government offices in Italy responsible for issues concerning Roma and Sinti, both Italian and non-Italian, are entitled “Offices for Nomad Affairs.”

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<sup>8</sup> See Sucar Drom website post dated 17 February 2009 <http://sucardrom.blogspot.com/2009/02/milano-grande-manifestazione.html>.

<sup>9</sup> See: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/411/25/PDF/G0641125.pdf?OpenElement>.

<sup>10</sup> European Roma Rights Centre/OSI/COHRE/Romani Criss/RCR, ‘Security a la Italiana’: Fingerprinting, Extreme Violence and Harassment of Roma in Italy, OSI and ERRC, Budapest, 8 July 2008, p. 7. <http://www.errc.org/db/03/4D/m0000034D.pdf>.

<sup>11</sup> European Roma Rights Centre, “Campland: Racial Segregation of Roma in Italy,” Budapest, October 2000. <http://www.errc.org/db/00/0F/m0000000F.pdf>.

<sup>12</sup> See: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/411/25/PDF/G0641125.pdf?OpenElement>.

<sup>13</sup> OSCE, “Assessment of the Human Rights Situation of Roma and Sinti in Italy: Report of a fact-finding mission to Milan, Naples and Rome on 20-26 July 2008”, March 2009, pp. 4 and 7.

21. In the late 1980s and early 1990s, 10 out of 20 regions in Italy adopted laws aimed at the “protection of nomadic culture” through the construction and legalisation of segregated camps for Roma and Sinti, rendering official the notion that all Roma and Sinti are nomads who must live isolated from the rest of Italian society.<sup>14</sup>
22. Today in Italy, there are officially established and recognised camps, semi-official camps and unofficial camps. Ongoing research and monitoring by the ERRC and osservAzione of the camps in Italy since 1996 indicates that at least 95% of the camp residents are Roma and Sinti. This includes Italian Sinti and Roma, Roma who have moved to Italy from other EU Member States and third country national Roma, Ashkalia and Egyptians,<sup>15</sup> who are mostly from the territory of the former Yugoslavia. Amongst the group from the former Yugoslavia are a number of stateless Roma, Ashkalia and Egyptians who have been living in Italy since the early to mid-1990s, as well as Roma who moved to Italy in the 1950s and 1960s, and who have not been able to regulate their stay in Italy.

#### The census of Roma and Sinti in Italy

23. Since the adoption of the Nomad Emergency Decree, government, police and NGO (Italian Red Cross) representatives have proceeded to conduct a census in two rounds which explicitly targets all Roma and Sinti. The first census was conducted in the period of June – October 2008, and was implemented in Milan, Rome and Naples. A second census has been ongoing in Rome since February 2009, and in March, police officials conducted censuses of Italian Roma and Sinti camps in the provinces of Verona, Venice, Treviso, Padua and Vicenza. The feared result is the creation of databases comprising almost exclusively Italian and non-Italian Roma and Sinti.<sup>16</sup>
24. ERRC observation and documentation of census activity in camps for Roma and Sinti between October 2008 and April 2009 confirm that the census undertaken is ethnically motivated and solely directly at Roma and Sinti. This was confirmed during ERRC interviews with representatives of the Italian Red Cross (IRC) who were directly involved in the collection of census data in Rome. IRC representatives interviewed by the ERRC indicated that although they did not collect data about the ethnicity of camp residents, they were aware that the vast majority of the people included in the census were Roma. During an interview with the ERRC in October 2008, Ms Deidda Rosa, Vice-President of the IRC in Rome, stated that since the beginning of the census in July 2008 in the camps in Rome, around 4,000 people were counted and that with very few exceptions all of them were Romani.<sup>17</sup> In addition, on 14 October 2008 the Italian newspaper Corriere Della Sera published an article on the results of the census, indicating that 4,268 Roma live in Rome’s “nomad camps.”<sup>18</sup> Detailed information about each of the camps in Rome was included. The reason that ethnicity was not an explicit subject of these censuses is very simple: there was no need to establish the ethnicity of the residents as it is well known to the authorities. The

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<sup>14</sup> For example, Regional Law 299/89 of Lombardia was entitled “Regional Action for the Protection of Populations with Nomadic or Semi-Nomadic Traditions.” Similar laws were enacted in the regions of Veneto, Lazio, Autonomous Province of Trento, Sardinia, Friuli-Venezia Giulia, Emilia-Romagna, Tuscany, Lombardia, Liguria, Piedmont and Marche.

<sup>15</sup> Throughout the remainder of this text, the ERRC uses the term Roma in reference to Roma, Ashkali and Egyptians.

<sup>16</sup> On 25 July 2008, the ERRC filed a legal case in the Lazio Administrative Court, challenging the legality of the Nomad Emergency Decree and all actions flowing from it on the basis that it is discriminatory.

<sup>17</sup> ERRC interview with Ms Deidda Rosa in Camp Via Tenuta Piccirilli, Rome, 10 October 2008.

<sup>18</sup> Brogi, Paolo. “Roma: 4,268, half in extreme conditions” (“Rom: 4.268, metà in condizioni estreme”). Corriere della Sera. 14 October 2008.

<http://www.legambiente.eu/associazione/rassegnaStampa/articolo.php?id=4579>.

camps targeted for census activity were either camps established by the government for the express purpose of holding Roma, or informal camps that are almost exclusively Roma.

25. According to interviews conducted by the ERRC with Italian Roma and Sinti and non-Italian Roma, the census procedure was in all cases the same or similar, even though Italian Roma and Sinti and some non-Italian Roma possessed valid identification documents issued by the Italian authorities. The lack of concern exhibited by the Italian authorities for this important legal fact during the implementation of the census clearly demonstrates that the censuses explicitly targeted Roma and Sinti as an ethnic group, independent of their legal status as citizens or lawful residents.
26. The most common data collected during the census was name, age, country of origin, ID number, presence or absence of a residence permit and its issuance and expiry date, as well as information on health status and educational background.

#### Non-Italian citizens

27. With respect to non-Italian and stateless Roma, the census was implemented in the same or similar manner regardless of their legal status (with or without resident permit). The most common data collected during the census was name, age, country of origin, ID number, information on health condition and educational background. However, in the camps in Naples (Camp Via Cupa Perillo – Centrale del Latte, Camp Baracche Rosa via Cupa Perillo and Camp Rotonda B Lato Sinistro)<sup>19</sup> interviews conducted by the ERRC with camp residents and a document made public by the Community of Sant'Egidio confirms that data about ethnicity and religion were also gathered.
28. In the camps visited by the ERRC housing non-Italian Roma, all the camp residents were photographed during the census, including young children and babies. In the camps in Naples the residents were also fingerprinted. During interviews conducted in March 2009 with the Roma fingerprinted in Naples, none of the interviewees had any information about whether the fingerprints taken still existed or had been destroyed.
29. ERRC observation and follow-up documentation of the census in Rome's Camp Via Salviati 1, Camp Via Salviati 2, Camp Via Tenuta Piccirilli, Camp Casilino 900, Camp Tor de Cenci and Camp Tor di Quinto-Baiardo, indicated that there was no distinction between Roma from other EU countries, Roma from non-EU countries or stateless Roma. According to ERRC observation, the Italian Red Cross, which conducted the first census in Rome, used the same data form, collected the same types of data from and photographed each individual regardless of the citizenship or legal status of the individual in question.
30. In Rome, Roma living in several camps have also been subjected to a second census.<sup>20</sup> The ERRC has documented or observed first hand the second census implemented in Camp Tor de Cenci, Camp Tor di Quinto-Baiardo and Camp Lombroso. According to informal ERRC inquiries in March and April 2009 with Italian NGO representatives, a second census was also conducted in Camp Casilino 900, Camp Monachina, Camp Martora, Camp Foro Italico, Camp Via Salviati 1, Camp Via Salviati 2, Camp Via Salone, Camp Castel Romano, Camp Via Candoni, Camp Via Gordiani, Camp Via Cesarina, and Camp via Tenuta Piccirilli.

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<sup>19</sup> ERRC interviews in Naples, 24 March 2009.

<sup>20</sup> On 20 March 2009, the ERRC sent a formal request to the Mayor of Rome and the Prefect of Rome for access to the legal documentation providing the basis for this action to determine if it is connected to the first census and the Nomad Emergency Decree. The Mayor of Rome responded that the Prefect must provide the information. As of 21 April, the ERRC had not received any further response.

31. In some of the camps inhabited by non-Italian Roma, residents reported to the ERRC that police and army officials implementing the census conducted illegal searches of their homes. For example, in Rome's semi-formal Camp Tori di Quinto-Baiardo and formal Camp Tor de Cenci, residents testified that beginning at 6:00 AM, police officers extensively searched their shacks without asking permission or providing any reason, explanation or court order<sup>21</sup> during the second census conducted in January and February 2009.
32. An approximately 60-year-old Romani man told the ERRC: "I was counted with my family by the army, police and municipal police. [...] They arrived at 6:00 AM and left at 4:00 PM. [...] They searched my shack with dogs; they did not show me a court order. They brought my son to the immigration office and then to Ponte Galeria. They have not released him yet [8 days later]."<sup>22</sup>

#### Italian citizens

33. Italian Sinti and Roma were subjected to the same or similar treatment as non-Italian Roma during the implementation of the census of nomad camps; the only commonality between the groups was their ethnic origin. The ERRC has documented census activity in Milan and in the Veneto region in which Italian Sinti and Roma were counted, regardless of the fact that they possessed valid identification documents.
34. In Milan's Camp Via Impastato, inhabited by about 40 Italian Sinti, around 60 police officers surrounded the camp and did not allow to anyone to enter or leave the camp during the census conducted on 6 June 2008. During the census, the police photographed the identity documents of all camp residents, including those of the children. In addition, during the census, the police searched the homes and cars of all camp residents without a court order.<sup>23</sup>
35. Similarly, according to ERRC documentation of the 17 July 2008 census conducted in Milan's Camp Via Idro inhabited by persons of Italian origin, around 70 police officers entered in the camp and demanded that all residents, including children, present their identity documents. The police proceeded to copy the information from the identity documents onto a special data sheet. None of the residents interviewed by the ERRC were provided a copy of the data sheet.<sup>24</sup>
36. Most recently, apparently under an order of the Ministry of Interior,<sup>25</sup> the police departments of the Veneto, Liguria, Piemonte and Lombardia regions, in an action coordinated with the Central Operative Service of the State Police, conducted a census of all camps for Italian Sinti and Roma in the provinces of Verona, Venice, Treviso, Padua and Vicenza.<sup>26</sup> During the census, conducted in March 2009, police officials checked the identity documents of all residents and also photographed each resident (aside from two camps, see Section 5 below)

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<sup>21</sup> Articles 247-252 of the Italian Code of Criminal Procedure set out that searches of homes may only be carried out on the basis of a reasoned decree issued by a court. A copy of the decree must be provided to the person subjected to the search, and searches should only be conducted between 7:00 AM and 8:00 PM.

<sup>22</sup> ERRC interview with a Romani man in Camp Tor di Quinto-Baiardo. Rome, 12 February 2009.

<sup>23</sup> ERRC interviews with Italian Sinti living in Milan's Camp Via Impastato. 11 March 2009. One of the camp residents has since filed a complaint against the Interior Minister, the Prefect of Milan, the Chief of Milan's Police and the Municipality of Milan.

<sup>24</sup> ERRC interviews with Italian Roma living in Milan's Camp Via Idro. 12 March 2009.

<sup>25</sup> ERRC telephone interview with Father Francesco Cipriani. 10 March 2009. Father Cipriani was subjected to the census and told the ERRC that when he asked the police officers about its legal basis they informed him it was an order of the Ministry of Interior.

<sup>26</sup> See the press release of the Verona Police dated 5 March 2009. On file with the ERRC.

who was forced to hold a sheet of paper just below their face containing their name, surname and ID number.

37. In reaction to widespread criticism of the measures, in July 2008 Italy's Minister of Defence, Mr Ignazio La Russa, announced that the census should be extended to include all Italian citizens. However, as of the time of this submission there has been no information publicly available on non-Roma/Sinti having been subjected to census activity in Italy, and certainly not census activity that involves house to house visits by law enforcement officers.<sup>27</sup>

### **Factual Profile of Violations of EU Data Protection Directive 95/46/EC**

38. In all cases observed or documented by the ERRC, there were clear violations of data protection procedures that should be afforded to data subjects in the collection of their personal data. In most cases, the ERRC is of the opinion that, where "consent" was given in rudimentary form, it cannot be considered voluntary. In extreme cases, the ERRC documented police, local government and NGO representatives responsible for implementing the census in nomad camps coercing camp residents to participate. The ERRC also observed two cases in Rome's Camp Via Tenuta Piccirilli in which census-takers requested and recorded the data of Romani adults who were not present at the time of the census.

#### Consent not freely given by the data subject

39. In the majority of cases documented by the ERRC, Roma and Sinti interviewees stated that they had agreed to be counted by so-called census-takers because they felt they did not have any other choice. These kinds of cases were observed by the ERRC in the following camps: Milan's Camp Via Impastato, Camp Via Triboniano Area 1, Via Triboniano 4, Camp Bacula and Camp Via Idro, and Rome's Camp Tor de Cenci, Camp Tor di Quinto-Bairardo and Camp Lombroso. The following testimonies are typical accounts, representative of every individual interviewed by the ERRC:

- A 30-year-old Romanian Romani man living in Milan's Camp Bacula stated: "I did not have a choice. The police came into my home and they asked me to give them my identification document. At that point I could not do anything."<sup>28</sup>
- A 50-year-old Romani man living in Rome's Camp Tor de Cenci stated: "A few months ago they came and we were counted. They did not say that I could choose. I had to do it. [...] They did not give us any information [about the purpose, etc.] about the census."<sup>29</sup>

#### Roma and Sinti coerced to comply with the census

40. ERRC documentation on the implementation of the census in Rome, Milan, Naples and in the Veneto region revealed that many Roma and Sinti were coerced, in various forms, to submit to the census.
41. In some cases documented by the ERRC, police and NGO census-takers clearly provided false information about the nature and purpose of the census to Roma and Sinti living in the camps in order to convince them to participate. For example, ERRC interviews conducted with Roma living in Naples (Camp Via Cupa Perillo – Centrale del Latte, Camp Baracche Rosa Via Cupa Perillo and Camp Rotonda B Lato Sinistro) show that around 30 police and

<sup>27</sup> EUBusiness.com. "Fingerprint all Italians, minister says." 11 July 2008. <http://www.eubusiness.com/news-eu/1215768938.64>.

<sup>28</sup> ERRC interview in Milan's Camp Bacula, 12 March 2009.

<sup>29</sup> ERRC interview with a Romani man in Camp Tor de Cenci. Rome, 10 February 2009.

IRC representatives assured the residents that if they participated in the census they would be able to legalise their stay in Italy.<sup>30</sup> The camps in question are inhabited by about 700 Roma from the countries of the former Yugoslavia that moved to Italy in the context of the war, many of whom have not been able to regularise their stay in Italy in the past 10 years. Camp residents told the ERRC that police and IRC representatives assured them that they would be given permanent residence if they participated in the census. As a result, most of the Roma living in the camps agreed to be counted, photographed and fingerprinted. The following is a selection of the testimonies gathered by the ERRC in this regard:

- A Romani man from the Camp Cupa Perillo – Centrale del Latte: “I was told by the police that they will use the information from the census to issue me a residence permit. However since then I did not get anything from them and I do not believe that they will issue us any documents.”<sup>31</sup>
- An approximately 45-year-old Romani man stated: “They [the police] said that the census form would be better than a residence permit. Two months ago the police stopped me for a check and I showed them the census form. They brought me to the police station and took my picture and fingerprints again. I stayed the night in a cell. The next day a judge gave me an expulsion order. I think they filed me during the census in order to be able to expel me from Italy easier.”<sup>32</sup>
- An approximately 40-year-old Romani woman stated: “The police and the Red Cross came to the camp for the census. They said I would get regular documents so I went to be counted. [...] They wanted our data to give us new documents, but they never gave us the documents. The census form is not valid as a document to stay in Italy. The police stopped my husband and gave him an expulsion order. [...] They fooled us. I trusted them and now I feel betrayed.”<sup>33</sup>

42. The ERRC also documented cases in which both Italian and non-Italian Roma and Sinti were subjected to the census under explicitly forceful and intimidating circumstances. According to information gathered during interviews with Roma from countries of the former Yugoslavia living in the semi-formal Camp Tori di Quinto-Baiardo (180 residents) and the formal Camp Tor de Cenci (350 residents) in Rome, the second census in the camps on 29 January and 3-4 February 2009 was conducted with the police and the army working with dogs. These officials were reportedly frequently aggressive and violent towards the residents. According to the Roma interviewed by the ERRC the following week, the army surrounded the camps during the census, preventing anyone from entering or leaving the camps while the census was in progress. During the census, police officers searched the residents’ homes with dogs, without showing any court order. Eighteen individuals were taken directly to immigration control offices by police officers during the census. One Romani youth whose family lives in Italy was deported directly to Croatia after having spent one week in the Ponte Galeria Identification and Expulsion Centre.<sup>34</sup>

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<sup>30</sup> ERRC mission to Naples, March 2009.

<sup>31</sup> ERRC interview with a Romani man in the camp Cupa Perillo – Centrale del Latte, Naples, 24 March 2009.

<sup>32</sup> ERRC interview with a Romani man from Camp Cupa Perillo – Centrale del Latte. Naples, 24 March 2009.

<sup>33</sup> ERRC interview with a Romani woman from Camp Baracche Rosa – Via Cuppa Perillo. Naples, 24 March 2009.

<sup>34</sup> ERRC interview with the girl’s mother, a 50-year-old Romani woman, in Camp Tor di Quinto-Baiardo. Rome, 12 February 2009.

43. According to ERRC interviews with Italian Sinti living in Milan's formal Camp Via Impastato, during the census conducted on 6 June 2008 by around 60 police officers, police surrounded the camp, searching the area and not allowing anyone to enter or leave the area. Police officers searched the homes of the camp residents and photographed their personal documents, including those of children, without a court order and without effective consent.
44. During the census in Rome's Camp Lombroso on 8-9 April 2009, the ERRC witnessed a *carabinieri* officer tell a young Romani woman: "It is a census and with it the Municipality gives you the card to stay at the camp. Here it appears that your husband has not done it. Tell him he has to do the census. If today he does not come to be counted, he cannot have the card and cannot live in this camp and in this container. It is your problem if you do not do it."
45. The following selection of testimonies from camp residents illustrate the level of fear and intimidation under which camp residents "voluntarily consented" to be subject to both the first and second rounds of census:
- One elderly Italian Sinti man told the ERRC: "I had to accept to be counted. The police knocked on my door at 5:00 AM and they said it was a census. [...] The Scientific Police searched all around outdoors with gloves. Then they search my caravan. People told me that other caravans were also searched. They showed no court permission to do this. I felt humiliated as an Italian citizen. We are Gypsies and not like other Italian citizens – I was imprisoned in many fascist concentration camps, and the police now treated me in this way!"<sup>35</sup>
  - An approximately 20-year-old Romani woman stated: "They [the police and army] wanted to check documents and do the census. The first day, they came for the documents and on the second day for the census. They treated everyone very badly. [...] In the first census the Red Cross gave me a card for medical care. They did not tell me that it was voluntary. They did not ask permission to record information about my children. [...] They brought me and my family into a van and took photographs of everyone, including my children."<sup>36</sup>
  - An approximately 70-year-old Romani man testified: "The police entered my house and asked for my ID documents. I have lived in Italy for many, many years but do not have a residence permit. They brought me to the immigration office where I slept over night. The next day I was brought to the Ponte Galeria Immigration and Expulsion Centre where a doctor visited me. After a few hours a judge issued me an expulsion order. [...] I was fingerprinted and photographed at the immigration office."<sup>37</sup>
46. In addition, the ERRC also documented one case in which a Romani man from the Rome's Camp Tor de Cenci was mistreated and beaten up by police conducting the second census. According to testimony from the abused man, he was outside the camp when the police arrived and a member of the army did not allow him to enter the camp. While he was waiting for permission to enter, several police officers began to humiliate him and then two of the officers beat him in front of other officers and camp residents. The individual indicated to the ERRC that when it was over, a Municipality of Rome representative advised him that it would be better for him if he didn't lodge a complaint.<sup>38</sup>

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<sup>35</sup> ERRC interview with a Romani man from Camp Via Impastato. Milan, 11 March 2009.

<sup>36</sup> ERRC interview with a Romani woman in Camp Tor de Cenci. Rome, 10 February 2009.

<sup>37</sup> ERRC interview with a Romani man in Camp Tor di Quinto-Baiardo. Rome, 12 February 2009.

<sup>38</sup> ERRC interview in a Romani man from Camp Tor de Cenci. Rome, 2 April 2009.

Inadequate information about the census provided to Roma and Sinti to ensure informed consent

47. Interviews by the ERRC with residents of the camps in which the census was conducted in both the first and the second round clearly indicate that implementing authorities did not provide sufficient information about the purpose of the census, where and how the data collected will be used and stored, who is authorised to access the data or how long the data will be kept. These types of information are required under EU data protection legislation to enable camp residents to give full and informed consent to any data collection effort, including a “census.”
48. Of the 16 camps in which the ERRC conducted primary research on the implementation of the census, there is not one documented case in which the Romani or Sinti individual in question had been provided with the above-mentioned information in a full, clear and understandable manner.
49. Not in a single instance documented by the ERRC were the Roma or Sinti concerned informed about how the data would be stored, who was authorised to access their data, for how long their data would be stored or how their data would be destroyed when the time came.
50. ERRC observation of the census conducted in Rome’s Camp Via Salviati 1, Camp Via Salviati 2, Camp Via Tenuta Piccirilli and Camp Casilino 900 revealed that the IRC, which implemented the census, provided camp residents with very short and general information about the reasons and purpose of the census. The vast majority of the ERRC interviewees from these camps stated that they were informed by the IRC that the census aimed to collect data about their health condition and educational background and to help them to improve their living conditions, which was not sufficient to constitute informed consent. They were not provided information on where the information would be stored, how long it would be kept for or who was authorised to access their personal data. As a result most of the camp residents agreed to participate in the census because they hoped that the census would help them to improve their living conditions. Moreover, the fact that they were given some official document by the IRC (the Red Cross card) was of great significance to many, because some of them had never had an official identity document of any kind. For example, one Romani man from Serbia stated: “I accepted to be registered because I do not have any official documents. At least this one will be available for a year.”<sup>39</sup> According to the IRC Rome Vice-President and a volunteer interviewed by the ERRC,<sup>40</sup> the IRC was obliged to provide the Prefect of Rome with only with general statistics about the situation in the camp; detailed personal information could reportedly be released only with a court order. This may explain the decision of Rome authorities to undertake a second census with police and army presence.
51. The ERRC has also registered cases in which camp residents were not provided any form of information about the purpose of the census. These people indicated to the ERRC that they had only agreed to be registered because all their peers were participating in the census. In addition, in camps where the census had been conducted more than once, camp residents interviewed by the ERRC indicated that they were not provided relevant information in either the first or the second census. The following is a small selection of testimonies illustrating this point:

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<sup>39</sup> ERRC interview with a Serbian Roma man from the camp Via Salviati 1, 9 October 2008.

<sup>40</sup> ERRC interviews with Ms Deidda Rosa and IRC volunteer D. in Camp Via Tenuta Piccirilli. Rome, 9 October 2008.

- A 50-year-old Romani woman counted in both the first and second census in Rome testified: “The police came to the camp and asked me to give them my identification documents. As I understood it was an inspection of documents and a census. They did not explain anything about what they will do with the data.”<sup>41</sup>
- A 23-year-old Romani woman from Romania stated: “they did not present me any reason for the census, but they asked if they could take some information from me and I agreed.”<sup>42</sup>
- A Romani woman who did not know that the census was supposed to be voluntary stated: “I gave them the information because everybody has been giving it to them.”<sup>43</sup>

52. In only one of the 16 Roma and Sinti camps (Rome’s Camp Lombroso) in which the ERRC collected primary research on the implementation of the census were the camp residents asked to sign a form consenting to the processing of their personal data. The consent form however, was only written in Italian and the more than 160 camp residents were from Bosnia and Herzegovina, many of whom speak Bosnian and Romanes as their first languages.

Particular problems regarding Romani and Sinti children in the census

53. Out of 16 camps from which the ERRC collected primary documentation of the census, in only one case, the second census in Rome’s Lombroso, did census-takers explicitly ask the parents to sign consent forms to collect and process information pertaining to their children.

54. During observation of the censuses in several camps in Rome in October 2008, the ERRC witnessed that the police, IRC and others involved in data collection did not ask for special permission from Romani parents prior to the counting or registration of their children, regardless of their age. In Rome’s Camp Via Tenuta Piccirilli, the ERRC observed only one case during days of observation in which the IRC representatives asked the parent for his permission to register his children.<sup>44</sup> All other ERRC interviewees from this camp stated that the IRC did not request special permission before registering the information about their children. According to a Romani man living in Rome’s Camp Via Salviati 2, the IRC registered his three children in the census without asking his permission.<sup>45</sup>

55. In Milan, police officers implementing the census in Camp Via Impastato, which is inhabited by Italian Sinti, reportedly did not request the permission of parents to record the information about their children.

- One Romani woman testified, “Around 70 police officers came to the camp at around 5:00 AM. They treated us like animals. They checked our documents [...] including the birth certificate of my 1-year-old son. [...] They did not ask permission to check the document of my son.”<sup>46</sup>
- During ERRC observation of the census in Rome’s Camp Lombroso, an approximately 40-year-old Romani woman told the ERRC: “When they lead us there and shut the door, we are alone and we always fear that something might happen.”

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<sup>41</sup> ERRC interview a Romani woman from Camp Tor de Cenci. Rome, 10 February 2009.

<sup>42</sup> ERRC interview with Romanian Romani woman from the camp Via Tenuta Piccirilli. Rome, 9 October 2008.

<sup>43</sup> ERRC interview with a Romanian Romani woman from the camp Via Tenuta Piccirilli. Rome, 9 October 2008.

<sup>44</sup> ERRC interview with a Romanian Romani man from the Camp Via Tenuta Piccirilli. Rome, 9 October 2008.

<sup>45</sup> ERRC interview with Bosnian Romani man from Camp Via Salviati 2. Rome, 9 October 2008.

<sup>46</sup> ERRC interview with an Italian Sinti woman from Camp Via Impastato. Milan, 11 March 2009.

56. Some Roma reported that they had been entrusted with children (i.e. grandparents, aunts and uncles) and do not have the children's birth certificate. They fear that the authorities might take the children away.

### **Collection and processing of fingerprints and photographs of Roma and Sinti**

57. In almost all camps in which the census was conducted which the ERRC visited, Italian authorities photographed the Roma and Sinti living in the camp.
58. In all three camps visited by the ERRC in Naples in June 2008, all camp residents with whom the ERRC spoke over the age of 14 were photographed and fingerprinted, whether they possessed identification documents or not.<sup>47</sup> There were no court orders presented or any written document which authorised the police to collect the fingerprints. At the time of ERRC documentation in Naples in March 2009, the authorities had not provided camp residents any information about the fingerprints taken from them or whether they had been destroyed.
59. Police officials and *carabinieri* implementing the census in Rome's Camp Lombroso on 8-9 April 2009 also fingerprinted camp residents during the census, according to ERRC documentation and observation.<sup>48</sup> On 8-9 April 2009, 23 Roma were brought from the camp to the *carabinieri* office and were identified through photographs and fingerprints. An ERRC discussion with the Roma that were taken away indicated that each person was taken individually into a room with two *carabinieri*, one to take photos (front and side) and fingerprints and the other at a computer to copy and check data. Each person over the age of 18 had to sign four papers related to photos and four related to fingerprints. The content of the documentation was not communicated to the subjects and no written copy was issued.
60. According to the Roma interviewed by the ERRC in Naples, the police and IRC photographed camp residents twice during the census. The first was a normal picture which appeared on the census forms. The second photograph was taken while the residents were holding a sheet of paper with a number written on it. The Roma interviewed by the ERRC did not know what the second photograph was intended for: "I was photographed by the police while holding a sheet of paper in my hands with a number on it. I do not know how they will use those pictures. On the copy of the census there is another picture without a number."<sup>49</sup>
61. The ERRC also registered photographing of the camp residents in the course of the first census in Rome implemented by the IRC in Camp Via Salviati 1, Camp Via Salviati 2, Camp Via Tenuta Piccirilli, Camp Casilino 900, Camp Tor de Cenci and Camp Tor di Quinto-Baiardo without any written documentation entitling them to do this. In the vast majority of cases documented by the ERRC, camp residents were not asked for special consent related to being photographed. Instead, the photographing was perceived by the residents as a part of the census procedure and they were just following the instruction given by the IRC representatives.

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62. Moreover, the ERRC also documented the photographing of Italian Sinti during a census implemented by police officials, apparently under the direction of the Ministry of Interior, in the Veneto regions. According to a 5 March 2009 press release from the Verona Police

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<sup>47</sup> This fact has also been confirmed by the OSCE. See note 13, above, at page 24.

<sup>48</sup> The ERRC's researcher in Italy observed both days of the census undercover as a representative of an Italian NGO.

<sup>49</sup> ERRC interview with a Romani woman from Camp Cupa Perillo – Centrale del Latte, Naples, 24 March 2009.

Department, in an action coordinated with the Central Operative Service of the State Police, police conducted a census of hundreds of Sinti living in the nomad camps in the provinces of Venice, Padua, Verona, Vicenza and Treviso. According to the press release, the action targeted 15 nomad camps housing *Giostrai*,<sup>50</sup> “many of whom are involved in predatory crimes.”<sup>51</sup> The Italian Sinti organisation Sucar Drom published information indicating that all Italian Sinti and Roma living in the camps in the noted area except Venice who possess valid Italian ID cards were photographed while holding a sheet of paper containing their name, surname and ID number, without any court order or other document authorising the action.<sup>52</sup> Sucar Drom reported that in Venice did the police not photograph people, instead copying all data from the ID cards of the Sinti living in the camps. During a telephone interview with the ERRC on 23 April 2009, Mr Davide Casadio, President of the Association of Italian Sinti, confirmed this information. Mr Casadio reportedly collected information from each camp in the noted provinces and in all but two camps (in Venice and Vicenza) did the police photograph all camp residents. As a resident of Vicenza’s Camp Montecchio Maggiore, Mr Casadio stated that he prevented the police from taking photographs of the residents in his camp.<sup>53</sup>

63. Francesco Cipriani, the priest of the Italian Roma living in Verona’s Camp Via la Rizza stated: “We are all Italian citizens and we have lived in this camp for 20 years. I do not understand why they have to check us this way. It seems that we are back at the beginning of the concentration camps. I was photographed with name and surname. I was the number 40 and Elisabetta 41. I want to make a reflection as an Italian citizen as we all are here at the camp: this would not have happened in a normal neighbourhood.”<sup>54</sup> During a telephone interview with the ERRC, Father Cipriani stated, “They [the police] did not show any court order. I and Elisabetta opposed and we refused to be filed. We were brought to the Verona’s Central Police Office. The policemen were embarrassed but they photographed us while holding a number in our hands. [...] They have not told me how they will use the photographs and the data.”<sup>55</sup>
64. Another concern regarding photo collection is that the police, the IRC and others involved in census implementation have taken pictures of children in almost all cases, including babies, without clear consent from the parents or any special permission. One Romani man from Rome’s Camp Via Salviati 2 testified that even his 7-month-old baby was counted and photographed without any special consent from him or his wife.<sup>56</sup> Additionally, the ERRC team present during the census in the Rome’s Camp Via Tenuta Piccirilli also witnessed how the children were photographed without any special consent by the parents. The sole justification given by IRC representatives to the ERRC team for taking pictures of the residents and their children was that the photographs are needed for the Red Cross cards that were provided to the residents.<sup>57</sup>

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<sup>50</sup> *Giostrai* is refers to persons who work in amusement parks and is stereotypically used in Italy when referring to Sinti.

<sup>51</sup> See the press release of the Verona Police dated 5 March 2009. On file with the ERRC.

<sup>52</sup> Sucar Drom website post dated 6 March 2009. <http://sucardrom.blogspot.com/search?updated-max=2009-03-09T08%3A38%3A00%2B01%3A00&max-results=18>.

<sup>53</sup> ERRC telephone interview with Mr Davide Casadio, Association of Italian Sinti. 23 April 2009.

<sup>54</sup> Beltrame, Giancarlo, “It seems that we are back to concentration camps” (“Mi pare di tornare ai campi di internamento”), *L’Arena*. 6 March 2009. p. 11. On file with the ERRC.

<sup>55</sup> ERRC telephone interview with Father Cipriani, 10 March 2009.

<sup>56</sup> ERRC interview Bosnian Romani man from Camp Via Salviati 2, Rome, 9 October 2008.

<sup>57</sup> ERRC interviews with the IRC volunteer David and Ms Deidda Rosa in the camp Via Tenuta Piccirilli, Rome, 9 and 10 October 2008.

### **Census is not linked to social integration policy in Italy**

65. Italy does not have a comprehensive policy to address the social exclusion of Roma and Sinti in the country. The government has publicly spoken about its intention to develop such a policy for the past 10 years, but without result.
66. According to the statements of Italian Government officials responsible for the census, the census is intended to lead to better security and living conditions for Roma and Sinti in Italy. In addition, IRC representatives in Rome testified to the ERRC that one of the main reasons for the census was to inform the development of a strategy or policy document for Roma inclusion in Rome.<sup>58</sup> In October 2008, the ERRC sent written requests for information to Rome's Delegated Commissioner for Roma and the Italian Red Cross, requesting information on the current status of this policy document and who else is involved in the drafting process of this document. To date, the ERRC has not received any answer from these institutions. Nor have any specific plans to develop a comprehensive Roma and Sinti integration policy in Italy been announced by government officials.
67. This alone raises serious concerns about how the data collected from the censuses will be used in reality and clearly links the censuses to the implementation of measures for the security of non-Romani/Sinti Italian citizens (i.e. controlling Roma and Sinti). Indeed, there are alarming indications in Rome and Naples that one of the primary goals of the census is to identify persons who have not been able to regularise their stay in Italy and commence expulsion proceedings against them.
68. On 22 October 2008, Interior Minister Maroni announced that the first census had been completed and that 124 Roma camps would be closed.<sup>59</sup> Widespread suspicions about the underlying motivations of the census were confirmed by the Prefect of Rome at a press conference convened on 26 January 2009. In explaining a six-step plan concerning Romani communities in the capital, Prefect Giuseppe Pecoraro announced the close down of camp Casilino 900; new regulations for formal settlements to guarantee legality, security, integration; start up of the second census, conducted, in formal settlements by police forces to check who has the right to stay and to adapt structures; the suppression of informal camps and ejection those who do not have the right to stay in Italy and transfer of those who have the right to stay in Italy in formal camps; job training in formal camps; and transfer of integrated families in municipalities that want to receive them.<sup>60</sup>
69. Since February 2009, several Romani camps have been dismantled in Rome and Milan and many more evictions and closures are expected: On 16 February Rome dismantled camps around Rome following the alleged rape of a young girl by eastern European immigrants<sup>61</sup>

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<sup>58</sup> Ibid.

<sup>59</sup> See:

[http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/speciali/censimento\\_nomadi/](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/speciali/censimento_nomadi/).

These figures are confirmed in a report issued on 16 April 2009 by the Council of Europe's Commissioner for Human Rights. See Note 67, below.

<sup>60</sup> Brera, Paolo G and Vincenzi, Maria Elena, "Security: Roma chased away and uniformed personnel in buses" ("Sicurezza, Rom Cacciati e Divise sui Bus"), La Repubblica, 27 January 2009.

<http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/01/27/sicurezza-rom-cacciati-divise-sui-bus.html>.

<sup>61</sup> "Italy begins dismantling Roma camps after rape sparks ethnic tensions."

<http://jurist.law.pitt.edu/paperchase/2009/02/italy-begins-dismantling-roma-camps.php>.

and on 31 March, Milan authorities forcibly evicted Roma living in Camp Bacula without the immediate provision of alternative accommodation.<sup>62</sup>

70. According to ERRC research, on 19 February, a new regulation signed by Prefect Pecoraro for Rome's seven formal camps (meaning many which currently exist will close) entered into force. According to the new regulation, police forces will permanently control the camps inside and out, surveillance cameras may be installed, anyone entering the camps will be identified, entry and parking of vehicles prohibited, no visitors after 10:00 PM, persons convicted of a crime and sentenced to more than 2 years are prohibited from residing in the camps, and foreigners must hold a residence permit or must demonstrate their residence in Italy for a period of at least 10 years. The regulation sets out that permission to reside in the camp will be withdrawn from those who, among other things, repeatedly refused a job, are sentenced to more than two years for a crime or whose behaviour creates serious disturbances for safe and civil coexistence.<sup>63</sup>
71. In addition, during the census conducted by police and *carabinieri* in Rome's Camp Lombroso<sup>64</sup> on 8-9 April 2009, the ERRC researcher was able to observe the census and speak with the officers implementing the census as a representative of a local NGO. During the second day of the census, one *carabinieri* officer stated to the ERRC researcher: "We are not interested in children; the municipality is interested in counting children. For us this is an operation of public security. We make the identification with photos and fingerprints of those who have no documents and then we send them to the officials of the Municipal Office for Nomad Communities for the census."
72. One the same day, a second *carabinieri* officer further explained: "It is a double survey: What we do is to identify them associating a name with fingerprints and photos. Then we check if they have criminal backgrounds or criminal cases pending and how many aliases. This way we can verify everything. It is a matter of public security: For example if someone is wanted from abroad, this way we can know everything."

## **VIOLATIONS OF EC LAW AND FUNDAMENTAL RIGHTS**

### **I. Data Protection: Processing of sensitive ethnic data**

73. The European Union regulates the manner in which personal data in Member States may be collected, processed, stored and exchanged in "Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data" (the Data Protection Directive).<sup>65</sup> The preamble states:

"2. [D]ata-processing systems are designed to serve man; whereas they must, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably the right to privacy ...

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<sup>62</sup> See: Amnesty International press release, 31 March 2009. <http://www.amnesty.org/en/news-and-updates/news/roma-forcibly-evicted-milan-settlement-20090331>.

<sup>63</sup> Regulation of formal nomad camps in the Municipality of Rome, 18 February 2009. On file with the ERRC. A similar regulation was adopted in Milan in 2009.

<sup>64</sup> Home to more than 160 Bosnian Roma. All but three lack any form of identity documents from Italy or Bosnia, including residence permits.

<sup>65</sup> Official Journal (EU) L 281, 23.11.1995, p. 31, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

10. [T]he object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ...;
74. Article 1(1) of the Data Protection Directive provides:
- “1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data. “
75. Article 6 provides for principles relating to data quality, and states:
- “Member States shall provide that personal data must be
- (a) processed fairly and lawfully;
  - (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards
  - (c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
  - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
  - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.”
76. Article 7 permits the processing of data in general terms, but only if the individual has unambiguously given consent, and the processing is necessary for a number of reasons including the protection of the vital interests of the individual.
77. However, Article 8 of the Data Protection Directive prohibits the processing of data that reveals ethnic origin save in three specific circumstances: where the individual consented (Art.8(2)(a)), where the measure is necessary to protect the vital interests of an individual who cannot consent (Art.8(2)(b)) and where it is required for medical reasons and is processed by a health professional (Art.8(3)). Article 8 states:
- “1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.
2. Paragraph 1 shall not apply where:
- (a) the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his consent; or
- [...]

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent;

[...]

3. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

4. Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in paragraph 2 either by national law or by decision of the supervisory authority.

[...]

6. Derogations from paragraph 1 provided for in paragraphs 4 and 5 shall be notified to the Commission.”

78. The Data Protection Directive makes a distinction between individual, identifiable data which is restricted, and collective, anonymous data which is permitted in some circumstances such as for the purposes of gathering anonymous data in order to establish whether ethnic profiling is occurring. Article 26 of the Directive states that “the principles of protection must apply to any information concerning an identified or identifiable person ... the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.” The Council of Europe has also made the distinction between anonymous and identifiable data and has issued recommendations on the processing of sensitive personal data for statistical purposes, which state:

“4.8. If sensitive data are to be collected for statistical purposes, these data should be collected in a form in which the data subjects are not identifiable.”<sup>66</sup>

79. The way in which the Emergency Measures breach EC law has been succinctly summarised in the recent report by Thomas Hammarberg, in which he observed as follows:

“On the basis of these legal sources, the following principles may be usefully recalled: a) All processing of personal data must be based on a domestic law that satisfies the quality criteria provided for by the European Convention on Human Rights, that is, it should be characterized by precision, accessible and foreseeable and afford a degree of effective legal protection against arbitrary interference by the authorities; b) The collection of sensitive data on individuals, such as those relating to their ethnic origin is prohibited, as a matter of principle. Exceptions may be provided for by law that conforms to the aforementioned quality criteria and strictly in the cases provided for by Article 8, paragraph 2, of Directive 95/46/EC; c) There must be limits to the length of time for which once collected information can be retained; d) All personal data processing

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<sup>66</sup> Council of Europe’s Recommendation No.R (97) 18 of the Council of Ministers to Member States concerning the protection of personal data collected and processed for statistical purposes, 30 September 1997.  
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=567406&SecMode=1&DocId=578856&Usage=2>

operations should be subject to close and effective supervision by independent and impartial data protection authorities.”<sup>67</sup>

#### The position of the Italian Government

80. The Italian Government have recently clarified their explanation of the measures introduced by the Nomad Emergency Decree in their response to the Report by the Council of Europe Human Rights Commissioner.<sup>68</sup> The Government claims that the purpose of the measures was to curb criminal behaviour (at para.26) and that no database has been created as the census was carried out “in accordance with national and international laws and regulations concerning the protection of privacy, through records that are used for all citizens, under the responsibility of authorized entities” (at para.37). They state that they considered it necessary to get detailed information about the number of the people living in the settlements in order to guarantee them a greater level of security and to improve their living conditions. As a consequence, a census was made to identify all the people, not only Roma and Sinti (at para.38).
81. Contrary to the Italian Government’s contentions, the facts show that the measures and the way in which they have been implemented demonstrate that sensitive personal information has been collected and processed with respect to a targeted ethnic group, allowing for the creation of a Roma and Sinti database. This means that the Emergency Measures are not in compliance with the EC Data Protection Directive. This is because (1) the census provided for allows for processing personal data based on ethnicity and (2) the specific criteria that may justify such a violation are not met.

#### Processing of ethnic data prohibited

82. Article 7 of the EC Data Protection Directive permits the processing of data in general terms, provided certain safeguards pertaining to legality, proportionality and necessity are respected. However, Article 8(1) prohibits the processing of data that reveals ethnic origin, i.e. personal data containing information exclusively on individuals of one particular ethnic group.
83. The European Court of Justice (ECJ) has previously found a violation of the Directive for a database that contained data on one group of the population in Germany. In the case of *Heinz Huber v Germany*, the ECJ reviewed the use of a centralized register of non-German EU citizens which was used for the purposes of immigration statistics, as well as by the police and security services for crime prevention and public security. The ECJ held that the processing of data concerning one group of EU citizens was discriminatory, and that the government justifications were insufficient. The Court held that “the storage and processing of personal data containing individualised personal information [in the register] for statistical purposes cannot, on any basis, be considered to be necessary within the meaning of Article 7(e) of Directive 95/46.”<sup>69</sup>
84. The information collected by the Italian Government contains data of only one ethnic group – the Roma and Sinti. Even if, as the government claims, the census does not explicitly ask

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<sup>67</sup> “Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Italy on 13-15 January 2009,” Strasbourg, 16 April 2009, para. 59.  
<https://wcd.coe.int/ViewDoc.jsp?id=1428427&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

<sup>68</sup> See: Italian Ministry of Foreign Affairs, “Italy’s Comments on the Report by Mr. T. Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy (13-15 January 2009),” Rome, March 2009, paras 26, 37 and 38. Available in “Report by Thomas Hammarberg,” note 67 above.

<sup>69</sup> *Heinz Huber v Germany*, ECJ, judgment of 16 December 2008 [GC], § 68.

about ethnicity, this makes no difference where the census only applies to one ethnic group. Thomas Hammarberg concluded that “[I]t is to be noted that the personal data collected and processed in this case are by definition ‘sensitive’ since they concern exclusively persons of a specific ethnic or racial origin.”<sup>70</sup>

#### Permitted exceptions not met

85. Article 8(2) allows for three specific circumstances where ethnic data may be processed: (1) where the individual consented, (2) where the issue is in the vital interest of an individual who is incapable of giving consent or (3) where it is required for medical reasons, and processed by a health professional.
86. None of these apply to the Emergency Measures. To the extent that it is argued that Roma and Sinti inhabitants of the settlements consented to the census, or were unable to give their consent, any waiver of a fundamental right must be established in an unequivocal manner and in full knowledge of the facts, that is to say on the basis of informed consent and without constraint.<sup>71</sup> The facts demonstrate that there was no attempt to give information as to the purpose of the census, the use of the information collected, where it would be stored and who would have access to it, but to the contrary, the census was carried out under a situation of tension and constraint, in the presence of police officers (Naples, Milan, Rome during the second census and in the Veneto region) or even soldiers (see paras 31 and 42 above re the second Rome census). The European Court of Human Rights (ECtHR) has held that particular care must be taken with a disadvantaged and often poorly educated community such as the Roma in order to be sure that they can weigh up all aspects of a complicated situation and understand the consequences of giving their consent.<sup>72</sup>
87. To the extent that the government argues that the information is for the purposes of health care and is held by “authorised entities”, the evidence demonstrates that the census was not conducted by health officials but by the police and the Italian Red Cross, a humanitarian aid organisation rather than health professionals. There is no evidence to suggest that data has been sent to health, educational and social services who would have assisted in the implementation of social measures.
88. The Italian Government claims that the measures do not target Roma and Sinti, giving instructions that the “operation shall not concern specific groups, individuals nor ethnic groups, but all people living in illegal and legal encampments, regardless of their nationality and religion.” However, the facts demonstrate the opposite: that the measure is targeted only at Roma and Sinti, directly or indirectly.
89. Similarly, the fact that the Italian Data Protection Authority<sup>73</sup> has “approved” the package as being in compliance with Italian law is not decisive as there is no clear basis for that approval.
90. To conclude, the collection and processing of individualized sensitive data is not necessary to enable the Italian Government to put in place and implement, for example, relief and support programs for which information by its nature can be statistical, and therefore anonymous and impersonal (See para. 78 above). The Government bears the burden of proof that the

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<sup>70</sup> Hammarberg, note 67 above, para. 55.

<sup>71</sup> *Pfeifer and Plankl v. Austria*, ECtHR, judgment of 25 February 1992, Series A no. 227, §§ 37-38.

*Deweert v. Belgium*, ECtHR, judgment of 27 February 1980, Series A no. 35, § 51.

<sup>72</sup> *D.H and Others v the Czech Republic*, ECtHR, judgment of 13 November 2007 [GC] § 202-204.

<sup>73</sup> Garante per la protezione dei dati personali, “Schema di linee guida in tema di insediamenti di comunità nomadi nelle regioni Campania, Lazio e Lombardia,” 17 July 2008.

<http://www.garanteprivacy.it/garante/doc.jsp?ID=1537659>.

collection of personal data is necessary, but has not adduced any compelling evidence to that effect. Consequently, there is a violation of the Data Protection Directive.

## II. Violations of Fundamental Rights

91. The Emergency Measures violate both EC law and the fundamental rights protected by the European Convention on Human Rights (ECHR), which are part of Community law by virtue of Article 6 of the EU Treaty, which states:

“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States ... The Union shall respect fundamental rights, as guaranteed by the [ECHR]... as general principles of Community law.”

92. In the case of *Kongra-Gel v Council* the ECJ reflected on the role of fundamental rights within EC law, affirming that:

“Article 6(2) of the European Union Treaty provides that the Union is to respect fundamental rights as guaranteed, inter alia, by the European Convention on Human Rights as general principles of Community law. The special significance of the Convention on Human Rights as a source of inspiration concerning general principles has long been recognized by the Community Courts.”<sup>74</sup>

93. In addition, the EC Data Protection Directive and the EC Racial Equality Directive make specific reference to the protection of fundamental rights and freedoms as obligations of Member States. Article 1(1) of the EC Data Protection Directive provides:

“1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.”

94. The EC Racial Equality Directive outlines the importance of fundamental rights in more detailed provisions:

“(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.”

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<sup>74</sup> *Kongra-Gel v Council*, ECJ, judgment of 3 April 2008, Case T-253/04, § 69.

95. In the case of *Österreichischer Rundfunk v Austria*, the ECJ clarified the close relationship between the Data Protection Directive and the right to privacy.<sup>75</sup> According to the ECJ, if national courts were to conclude that the national legislation with regard to the processing of personal data is incompatible with Article 8 ECHR, that legislation would also be “incapable of satisfying the requirement of proportionality” in Articles 6 and 7 of Directive 95/46. This means, according to the ECJ that each of the exceptions to the rights as included in Directive 95/46 must comply with the requirement of proportionality with respect to the public interest objective being pursued, as measured against the standards set forth in Article 8 ECHR and the relevant jurisprudence of the European Court of Human Rights.

96. Article 8 ECHR provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

97. The Emergency Measures have resulted in violations of Article 8 ECHR in two particular circumstances. Firstly, the census, allowing for the creation of a Roma and Sinti database, involves the collection and processing of personal data from a single ethnic group in the form of sensitive ethnic data, photographs and fingerprints, interfering with the right to privacy. Secondly, the census was conducted in a violent and arbitrary manner involving police raids on Roma and Sinti settlements, searches and in some cases evictions and destruction of dwellings, interfering with the right to respect for home and the right to property.

98. These actions breached the ECHR because there was an insufficient legal basis for such interference, there was no proper justification for the interference, and the interference was disproportionate to the stated aims pursued. In addition, the “state of emergency” has not been notified to the Council of Europe under Article 15 ECHR to allow for derogation from these rights (see paragraphs 119-123 below).

The Conduct of the Census clearly engages Article 8 ECHR

99. As has been noted in para.18 above, the term “Nomadi” is a synonym for the Roma and Sinti ethnic group,<sup>76</sup> meaning that the census carried out under the Emergency Measures amounts to processing of personal data of individuals with one common characteristic: their ethnic origin. The relevant data in the census includes national origin, photographs and fingerprints.<sup>77</sup> As a result of the single-ethnicity census, Roma and Sinti are subjected to enhanced law enforcement measures with few procedural safeguards, side-stepping existing national legal norms.

100. In the case of *X v. the United Kingdom*, the European Commission of Human Rights found that a census which included questions that the claimant considered to have a private character, which he refused to answer, and for which he was then fined, clearly engaged Article 8. The Commission found that where the census included questions relating to gender, marital status, place of birth and other personal data including health, social services and tax

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<sup>75</sup> *Österreichischer Rundfunk v Austria*, ECJ, judgment of 20 May 2003, C-465/00, OJ C 171, 19.07.2003, p. 3.

<sup>76</sup> See Hammarberg, note 67 above.

<sup>77</sup> See OSCE, 2009, note 13 above, para 4.

information, this constituted a *prima facie* interference with the right to private life.<sup>78</sup>

101. In the recent case of *S and Marper v United Kingdom*,<sup>79</sup> which concerned the retention of fingerprints and DNA samples, the European Court of Human Rights (ECtHR) found that private and family life includes “an individual’s ethnic identity” (at para.66) and that both fingerprints and photographs amounted to “personal data” and therefore engaged Article 8 (at para.81). The Court also considered that “the mere storing of data relating to the private life of an individual amounts to an interference” within the meaning of Article 8 (at para.67).
102. The manner in which the census of Roma and Sinti in Italy was carried out interfered with private life at least to the extent of the interferences in the cases outlined above. The factual description contained in paragraphs 38-64 of this report demonstrates the intrusive nature of the way in which the census was undertaken. Unlike such processes in normal circumstances, the census of the Roma and Sinti was undertaken by police in dawn raids, with military cordons surrounding their communities and detailed searches undertaken of their homes at the same time. In some cases this led to the arrest or expulsion of individuals, or to evictions and destruction of homes.
103. The settlements in which the affected Roma and Sinti community members live, including temporary shelters, constitute a “home” within the meaning of Article 8 ECHR.<sup>80</sup> Whilst in most cases the occupation of the Roma settlements was lawful, even where occupation of property is illegal, this will not necessarily prevent that occupation from being that person’s “home” within the meaning of Article 8 of the Convention.<sup>81</sup> Property is protected regardless of the condition of the dwellings, and “notwithstanding the fact that the building had been erected in breach of the law.”<sup>82</sup>
104. Searches of the dwellings inhabited by the affected Roma and Sinti population instituted by the Italian Government under the Emergency Measures have therefore resulted in a *prima facie* interference with the Article 8 together with the right to property in Article 1, Protocol 1 ECHR.<sup>83</sup>

#### Insufficient justification under Article 8(2) ECHR

105. Any interference with Article 8 may be justified only in accordance with the strict conditions set out in Art 8(2) ECHR: it must be in accordance with the law, it must pursue a legitimate aim and it must be proportionate to that legitimate aim.<sup>84</sup> Once an interference with Article 8 is established, the burden of proof shifts to the Government to demonstrate that those conditions are fulfilled, which the Italian Government has failed to do.
106. In their response to the Hammarberg Report, the Italian Government contends that the existing Roma and Sinti settlements cannot ensure appropriate living conditions and that forced evictions carried out by the police “often” have the purpose to provide more appropriate accommodation for those families with women and children (at para.28); that

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<sup>78</sup> *X v. the United Kingdom*, Commission decision of 6 October 1982, no. 9702/82. The Commission, however, concluded that this interference was justified in the particular circumstances of that case.

<sup>79</sup> *S. and Marper v. the United Kingdom*, ECtHR, judgment of 4 December 2008, no. 30562/04.

<sup>80</sup> *Gillow v. United Kingdom*, ECtHR, judgment of 24 November 1986, Series A no. 109.

<sup>81</sup> *Khatan and 180 others v the United Kingdom*. ECommHR, decision of 1 July 1998, application no. 38387/97. See also *Buckley v. United Kingdom*, ECtHR, judgment of 25 September 1996, Reports-IV 1996.

<sup>82</sup> *Öneryildiz v. Turkey*, ECtHR, judgment of 30 November 2007, [GC], No.48939/99, Reports of Judgments and Decisions 2004-XII, §§ 119-129.

<sup>83</sup> See also *Akdivar and Others v. Turkey*, ECtHR, judgment of 16 September 1996, application no. 21893/93, § 88. In this case the ECtHR found a violation of both Article 8 and Article 1 of Protocol 1, following the destruction of homes and their contents of alleged PKK members.

<sup>84</sup> *Chapman v. the United Kingdom*, judgment of 18 January 2001, application no. 27238/95, § 90.

“some best practices” on the matter have emerged in Italy, such as those developed at the municipal level in Bologna that has transferred Roma people from illegal camps to authorized camps and from authorized camps to regular housing (para.28); and that in the “following” phases, adequate facilities, called “solidarity villages”, will be set up (para.39).

*a. Insufficient legal basis*

107. The ECHR requires that any interference with private life must have a sufficient legal basis in order to prevent arbitrariness. In *S and Marper v UK* the ECtHR reiterated that “the wording ‘in accordance with the law’ requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law.”<sup>85</sup> Where the law involves the use of discretionary powers the Court held that it must indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise. Domestic law must afford appropriate safeguards to prevent any use of personal data that may be inconsistent with the guarantees of Article 8, in particular when data is used for police purposes.<sup>86</sup>

108. With regard to the census of Roma and Sinti allowing for the creation of an ethnic database, the procedures envisaged in the Emergency Measures lack sufficient detail and are arbitrary as they fail to explain:

- Where and how the personal data of the Roma and Sinti population subject to the census is to be stored;
- For which purposes the data is (going to) be used;
- Who has access to the data;
- How long the data will be retained;
- What are the rights and remedies for members of the Roma and Sinti community whose personal data are processed to verify the data entered, have it corrected and/or deleted.

109. With regard to the use of the police to conduct the raids, neither the Nomad Emergency Decree nor its implementing orders and guidelines describe the boundaries of the police’s exercise of powers. The law enforcement agencies, headed by the Prefects, are given very broad ranging powers to adopt “all the necessary measures to solve the state of emergency”<sup>87</sup> in explicit derogation of existing national and international safeguards adopted by the Italian Government. There is no regulatory framework that they are required to follow, and these actions were carried out without any judicial warrant or supervision, either before or after the acts. As the facts demonstrate, there have been ongoing – often violent – raids on Roma and Sinti settlements with house searches, identity checks, together with some instances of evictions and destruction of property (see paras. 42-46 and 69 above).

110. The blanket mandate and indiscriminate use of power clearly lacks the adequate and effective safeguards against abuse of data required under Article 8 ECHR.

*b. Legitimate aim*

111. The Italian Government now claims that the purpose of the legislation is (1) to fight crime and illegal immigration and (2) to provide support, relief, social and educational assistance to an underprivileged and marginalized group (see Article 1(g)-(i) of the Implementing Orders). However, the Government has not demonstrated how these measures

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<sup>85</sup> *S and Marper v. the United Kingdom*, note 80 above, para. 95.

<sup>86</sup> *Ibid.* para. 103.

<sup>87</sup> Article 1, sub 1 of Ordinances No. 3676, 3677, and 3678.

achieve the aim of the prevention of crime or how they help the affected Roma and Sinti population in a manner that does not stigmatise and negatively impact them.

112. As regards the first aim, the storing of information for the purpose of enforcing immigration legislation and fighting crime cannot be met by gathering and storing *all* personal data of *all* Roma and Sinti. Such a measure turns an entire ethnic group into suspects. Criminal and immigration investigations should be aimed at individual suspects and not at an entire ethnic group.
113. Moreover, the government's current purported justifications contradict the rationale offered by the text of the Nomad Emergency Decree itself, which states that the measures are to combat the 'extremely critical situation that has developed in the territory of the Lombardia region, due to the presence of irregular third-country citizens and nomads who have settled in a stable manner in urban areas' (see Annex). Only after the Decree's adoption provoked international protest did the Italian Government shift tack and proffer what it apparently considered to be a less objectionable justification. The belated, after-the-fact and changing nature of the government's justification renders it inherently suspect. In addition, even on their own terms, the more recent justification proffered falls short of the requirements of the ECHR.
114. As regards the second aim, no consultations have taken place with the affected Roma and Sinti community as to their actual needs. Despite certain announced measures there have been no substantive steps to effectively improve their living conditions. The proclamation of the Italian Government that the information of the census will be used to provide relief for the Roma and Sinti community has not been backed up by concrete action.<sup>88</sup> Indeed, the Italian Government's raids and searches in the settlements followed by forced eviction of the Roma from their dwellings without any alternative housing has rendered many of them homeless, forcing them to disperse to find temporary shelter in tents thus living in even worse conditions. This has constituted an affront to the affected persons' moral and physical integrity and dignity.
115. Contrary to the Italian Government's representations, the measures taken so far have been almost entirely aimed at incarceration and expulsion of alleged criminals and illegal immigrants within the Roma population group, while the Italian Government has to date failed to develop a comprehensive policy on the social inclusion of Roma and Sinti.

*c. Proportionality*

116. Even if the actions were pursuant to a legitimate aim, any measures adopted must be a proportionate response to the specific problem and necessary in a democratic society. Thomas Hammarberg of the Council of Europe has concluded that the measures were disproportionate:

"The Commissioner recalls that the collection and storage (processing) of sensitive personal data of Roma should have responded to the fundamental principle of necessity which has been established in European personal data protection law. In other words, the collection and storage of sensitive personal data of Roma that took place should have been absolutely necessary for the accomplishment of the authorities' aim of ensuring 'the adoption of social, welfare and integration measures, aimed at improving the living conditions of Roma people'. In view also of the fact that most of these people that were finally registered were Italian citizens, it is well arguable that the above aim could have

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<sup>88</sup> See above, para. 65 and following.

been achieved without such a large-scale emergency census and processing of sensitive personal data.”<sup>89</sup> (emphasis added)

117. In considering the proportionality of the measures at issue in the case of *S and Marper v UK*, the ECtHR underlined “the risk of stigmatisation, stemming from the fact that persons in the position of the applicants, who have not been convicted of any offence and are entitled to the presumption of innocence, are treated in the same way as convicted persons.”<sup>90</sup> The Court emphasized that the retention of the un-convicted persons’ data may be especially harmful in the case of minors given their special situation and the importance of their development and integration in society.<sup>91</sup> The European Commission against Racism and Intolerance for its part has warned against abuse and stigmatization as a result of the use of individualized data based on ethnicity.<sup>92</sup> The Council of Europe Human Rights Commissioner has also warned of the “serious negative effect upon the Roma and Sinti populations ... and on their image to the public at large.”<sup>93</sup>

118. Given the dangerous consequences for European society of the creation of a dossier for the purpose *inter alia* of expelling members of a particular ethnic group from a country, the Italian Government would have to demonstrate compelling reasons for their actions. This they have failed to do. The response is clearly disproportionate and not necessary in a democratic society.

State of emergency: No derogation from ECHR

119. Actions taken under the Emergency Measures are based on a state of emergency decree which purports to derogate from the rights guaranteed under the ECHR on the basis that the emergency situation “cannot be tackled using the instruments provided in the ordinary legislation.”<sup>94</sup>

120. However, this is only permissible when the requirements of Article 15 ECHR have been met.<sup>95</sup> Article 15 requires a formal communication to the Secretary-General of the Council of Europe informing him of both of the introduction of derogating measures and of the reasons for them, and of the lifting of those measures.<sup>96</sup> The question of whether or not the derogation is lawful is one that is subject to the supervision of the European Court of Human Rights.

121. In the case of *Brannigan and McBride v the United Kingdom*, the ECtHR held that any derogation from the ECHR can only be to the extent that is strictly required by the circumstances, which must be considered in a European dimension:

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<sup>89</sup> Hammarberg, note 67 above, para. 57.

<sup>90</sup> *S and Marper v the United Kingdom*, note 80 above, para. 122.

<sup>91</sup> *Ibid.* para. 124.

<sup>92</sup> Simon, Patrick. “‘Ethnic’ statistics and data protection in the Council of Europe countries,” ECRI, Strasbourg, November 2007.

[http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic\\_statistics\\_and\\_data\\_protection.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf).

<sup>93</sup> Hammarberg, note 67 above, para. 56.

<sup>94</sup> Nomad Emergency Decree, see Annex.

<sup>95</sup> Article 15(1) of the ECHR provides: “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

<sup>96</sup> Article 15(3) of the ECHR provides: “Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate again being fully executed.”

“43. [...] Contracting Parties do not enjoy an unlimited power of appreciation. It is for the Court to rule on whether *inter alia* the States have gone beyond the “extent strictly required by the exigencies” of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision (*ibid.*). At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation.”<sup>97</sup>

122. The Court went on to examine whether there existed “a public emergency threatening the life of the nation” and further assessed whether the derogation made by the United Kingdom was “strictly required by the exigencies of the situation” and concluded that in the circumstances of the ongoing terrorist threat in Northern Ireland, declaring a public emergency which derogated from the right to liberty and security was justified.

123. The Italian Government has fulfilled neither the procedural nor the substantive requirements under Article 15 ECHR which would allow it to derogate from the rights safeguarded by the ECHR.

#### Conclusion

124. The conduct of the Roma-only census, characterised by police raids and unwarranted identity checks targeting Roma and Sinti exclusively, together with evictions and destruction of homes and possessions did not have the requisite procedural safeguards and was not necessary in a democratic society. The Italian Government has failed to strike a fair balance between the competing interests of the right of the Roma and Sinti community to a dignified private life and home and the purported interests of the State to regularise the situation of the Roma encampments and fight illegal immigration and crime. The conduct of the census amounts to a violation of the right to respect for privacy and home under Article 8 ECHR and the protection of property pursuant to Article 1 Protocol 1 ECHR.

### **III. Discrimination**

125. The Emergency Measures and their implementation are in direct breach of the EC Racial Equality Directive and fundamental rights law under the ECHR. The Roma and Sinti population, a vulnerable minority group, has been singled out for special, invidious treatment. The group’s mere presence has been designated as the cause of a state of emergency. Roma and Sinti have been subjected – solely by virtue of their membership in this vulnerable minority group – to discriminatory treatment consisting primarily of repressive law enforcement measures, such as unchecked raids on Roma and Sinti settlements, collection and storing of personal information, evictions and destruction of homes. The use of stereotypes based on ethnic origin as the basis for official decisions – whether in the field of law enforcement or access to housing and public accommodations - violates, in respective part, the EC Racial Equality Directive and also fundamental rights under the ECHR.

#### The Government’s position

126. The Italian Government claims that the measures included in the Emergency Measures are meant to curb criminal behaviour of individuals, to curb immigration and to improve living standards of the Roma.<sup>98</sup> The government denies that any provision is envisaged against any community, group or class, or linked to any form of discrimination and

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<sup>97</sup> *Brannigan and McBride v The United Kingdom*, ECtHR, 26/05/1993, Nos. 14553/89 and 14554/89, Series B-258.

<sup>98</sup> See Response of Italian Government, note 68 above, and paragraph 80 of this report.

xenophobia (para.26 of the Government response). It contends further that the number of temporary shelter places for women and children has been increased (para.29) and that health programs, including vaccination of children, have been initiated in the *Casilino 900* camp in Rome (para.30). It further refers to plans for inclusion of Roma that have been adopted in certain municipalities (e.g. “Plan for Nomads” in Rome, para.32) and that some settlements include pre-school facilities, while others offer some form of transportation to and from schools (para.46).

#### Violation of the EC Racial Equality Directive

127. Article 13 of the EC Treaty provides for legislation to be promulgated that prohibits discrimination on grounds including racial or ethnic origin,<sup>99</sup> pursuant to which the Council of the European Union adopted the EC Racial Equality Directive. The Directive applies to all persons in European Union Member States, regardless of their nationality. Article 2 provides:

##### *Concept of discrimination*

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

[...]

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

128. Article 3 of the EC Racial Equality Directive provides:

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: [...]

(h) access to and supply of goods and services which are available to the public, including housing.

129. In the *Johnston* case the ECJ ruled that any derogation from an individual right to equal treatment must be interpreted strictly.<sup>100</sup> The ECJ has emphasized that the principle of proportionality must be respected in each case. In the *Sirdar* case the ECJ further held:<sup>101</sup>

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<sup>99</sup> Article 13 provides: ‘1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’

<sup>100</sup> *Johnston v Chief Constable of the Royal Ulster Constabulary*, ECJ, C-222/84, May 1986, European Court Reports 1986, p. 01651. This case concerns the carrying of fire-arms exclusively by male police officers in the performance of their police duties in Northern Ireland.

“In determining the scope of any derogation from an individual right such as the equal treatment [...], the principle of proportionality, one of the general principles of Community Law, must also be observed (...) That principle requires that derogations remain within the limits of what is appropriate and necessary in order to achieve the aim in view and requires the principle of equal treatment to be reconciled as far as possible with the requirements of public security.”

130. The above precedents established by the ECJ in the context of gender equality set clear standards and general principles of EC non-discrimination law which apply *mutatis mutandis* in the present case.

#### Application of the legal principles to Italy

131. Roma and Sinti are an historically vulnerable group which has suffered and continues to suffer persecution and discrimination throughout Europe and who deserve special protection by the Italian Government (see paragraph 140-141 below). Not only are the “positive measures” taken so far insufficient to protect Roma and Sinti and enable their inclusion into society,<sup>102</sup> the Italian Government has done the opposite through the introduction of the Emergency Measures. These measures have lead directly to discriminatory treatment of Roma and Sinti in breach of the Directive by:

- Defining the mere presence of the Roma and Sinti as grounds for a state of emergency creating an intimidating, hostile, degrading, humiliating or offensive environment: Direct Discrimination, Harassment.
- A publicly proclaimed negative attitude towards Roma and Sinti by (the highest) public officials (see para.11 above), as well as failing to prevent or condemn widespread and systematic racist violence against Roma and Sinti: Harassment.
- The adoption of the Emergency Measures, explicitly calling on local authorities in Campania, Lombardia and Lazio to target Roma and Sinti in census activity: Instruction to discriminate.
- Granting enhanced and unchecked law enforcement and immigration measures that target Roma and Sinti exclusively, including the emergency census of Roma and Sinti characterised by unnecessary police involvement: Direct Discrimination, Harassment.
- Directly discriminating against Roma and Sinti by conducting a compulsory census on the basis of their accommodation in camps for nomads created by the government: Discrimination in access to and supply of housing.
- The adoption and implementation of the Emergency Measures, allowing for the creation of an ethnic database of Roma and Sinti without adequate safeguards: Direct Discrimination.
- The adoption of the Emergency Measures, resulting in unlawful searches of the homes of Roma and Sinti: Discrimination in access to and supply of housing.

132. The positive measures put forward by the Italian Government referred to above do not justify, counterbalance, remedy or provide sufficient relief for the discrimination suffered and the scale of the impact on the affected Roma and Sinti community members of the repressive

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<sup>101</sup> *Angela Maria Sirdar v. The Army Board and Secretary of State for Defence*, ECJ, judgment of October 26, 1999, C-273/97, European Court Reports 1999, page I-7403.

<sup>102</sup> See for instance, Brussels European Council, 19/20 June 2008, Presidency Conclusions.

measures.<sup>103</sup>

#### Fundamental Rights – Article 14 ECHR

133. Article 14 ECHR prohibits discrimination on racial and ethnic (as well as other) grounds in the exercise of fundamental rights, which include the right to protection of private life, home and possessions as protected by Article 8 ECHR and Article 1 Protocol 1 ECHR (see Section I above). Article 14 ECHR provides:

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

134. In the case of *Timishev v Russia* the European Court of Human Rights explained that:

“44. A differential treatment of persons in relevant, similar situations, without an objective and reasonable justification, constitutes discrimination. Discrimination on account of one’s actual or perceived ethnicity is a form of racial discrimination [...] Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.”<sup>104</sup>

135. The Court went on to conclude that while it may on occasion be possible for a government to justify a difference in treatment in some areas of law and on certain grounds, there is no such discretion when it come to differences on grounds of ethnicity:

“58. No difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”

136. The treatment also amounts to ethnic profiling, defined as “the practice of classifying individuals according to their ‘race’ or ethnic origin, their religion or their national origin, on a systematic basis, whether by automatic means or not, and of treating these individuals on the basis of such a classification.”<sup>105</sup>

137. As the European Union Network of Independent Experts on Fundamental Rights has noted, treating differently individuals who are otherwise similarly situated according to their presumed race or ethnicity has such far-reaching consequences in creating divisiveness and resentment, in perpetuating harmful stereotypes, and in leading to the over-criminalisation of certain categories of persons, in turn reinforcing such stereotypical associations between crime and ethnicity, that differential treatment on this ground should in principle be considered unlawful under any circumstances.<sup>106</sup>

138. In conclusion, the Nomad Emergency Decree and its implementing orders and guidelines targeting Roma and Sinti violates:

- Articles 2 and 3(1)(h) of the EC Racial Equality Directive;
- Article 14 ECHR in conjunction with Article 8 ECHR and Article 1 of Protocol 1.

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<sup>103</sup> See paragraphs 65-72 above.

<sup>104</sup> *Timishev v Russia*, ECtHR, judgment of 13 December 2005, application Nos. 55762/00 and 55974/00.

<sup>105</sup> E.U Network of Independent Experts on Fundamental Rights, *Ethnic Profiling*, CRF-CDF, Opinion, 4.2006, December 2006, p 9. [http://ec.europa.eu/justice\\_home/cfr\\_cdf/doc/avis/2006\\_4\\_en.pdf](http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf).

<sup>106</sup> *Ibid*, p. 6.

### Fundamental Rights – Article 3 ECHR

139. The systemic discrimination suffered by the targeted Roma and Sinti population, being singled out on racial and ethnic grounds, being denied their basic rights pursuant to the Emergency Measures, being subjected to racist speech by politicians and denied protection against physical attacks and abuse by the majority population, all done specifically and publicly, amounts to conduct which is an affront to human dignity to the point of being inhuman and degrading treatment as prohibited under Article 3 ECHR.

#### *Special protection*

140. The Roma and Sinti are a particularly vulnerable group. Their historic marginalisation and social exclusion across Europe has been repeatedly recognized and underscored by various European bodies. In the case of *D.H v Czech Republic* the European Court of Human Rights stated:

“Although they have been in Europe since the fourteenth century, often they are not recognised by the majority society as a fully-fledged European people and they have suffered throughout their history from rejection and persecution.... As a result of centuries of rejection many Roma communities today live in very difficult conditions, often on the fringe of society in the countries where they have settled, and their participation in public life is extremely limited.”<sup>107</sup>

141. The Strasbourg Court has recognised that this vulnerability means that governments must be particularly vigilant to protect the fundamental rights of Roma. In *Connors v UK* the Court was considering the eviction of English Gypsies without reasons which could be examined by an independent tribunal. The Court, in finding a violation of the Convention, outlined a specific protection for the way of life developed by English Gypsies:

“84. The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, cited above, § 96 and the authorities cited, *mutatis mutandis*, therein).

94. [...] The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community.”<sup>108</sup>

#### *Discrimination as degrading treatment*

142. Article 3 ECHR prohibits torture and inhuman or degrading treatment. The European Commission of Human Rights first established that racism can amount to degrading treatment in violation of Article 3 in the 1973 case of *East African Asians v United Kingdom*.<sup>109</sup> The case concerned legislation that prevented Asians from East Africa from entering the United Kingdom. Whilst the legislation was neutral on its face, by reference to Parliamentary debates and expert statistical and demographic evidence the applicants demonstrated the true motive behind the legislation.

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<sup>107</sup> *DH and Others v Czech Republic*, note 73 above, at para.13.

<sup>108</sup> *Connors v UK*, ECtHR, judgment of 27 May 2004, application no. 66746/01.

<sup>109</sup> ECommHR, decision of 15 December 1973, application no. 4403/70.

143. The Commission found it “established that the 1968 Act had racial motives and that it covered a racial group. When it was introduced into Parliament as a Bill, it was made clear that it was directed against the Asian citizens of the United Kingdom and Colonies in East Africa and especially those in Kenya.” (At para.199). The Commission found a violation of Article 3 on the basis that the law had “discriminated against this group of people on grounds of their colour or race” (at para.201). They concluded that:

“207. [...] [A] special importance should be attached to discrimination based on race; that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question.

208. The Commission considers that the racial discrimination to which the applicants have been publicly subjected by the application of the above immigration legislation constitutes and interference with their human dignity which, in the special circumstances described above, amounted to ‘degrading treatment’ in the sense of Article 3 of the Convention.”

144. In the case of *Cyprus v Turkey* the European Court of Human Rights reviewed the intensity of the discrimination suffered by the Greek minority population in the Turkish part of Cyprus.<sup>110</sup> The Court re-iterated the above statement of law from the East African Asians case and concluded that the Greek Cypriot community living in the Karpas region had been subjected to discrimination amounting to degrading treatment in violation of Article 3 ECHR. In coming to that conclusion the Court reviewed the segregated and precarious situation in which the Greek-Cypriot community was compelled to live as relevant to the issue of whether its members had been subjected to degrading treatment:

“309. For the Court it is an inescapable conclusion that the interferences at issue were directed at the Karpas Greek-Cypriot community for the very reason that they belonged to this class of persons. The treatment to which they were subjected during the period under consideration can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion. ... [I]solated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.”

145. The European Court of Human Rights has furthermore established that treatment which results in mental suffering and anguish can attain a level of severity at which it becomes inhuman or degrading. In the case of *Stoica v Romania* the ECtHR held that treatment is deemed to be “degrading” because it was such “as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them.”<sup>111</sup>

146. In the instant case, the discriminatory motive for the singling out of the Roma and Sinti and subjecting them to invidious treatment is not hidden. To the contrary, it is written into the text of the Emergency Nomad Decree itself, which is directed in its title “to settlements of nomad communities” and is introduced “due to the presence of numerous irregular third-country citizens and nomads”, referring to the “abusive camps” in Milan where the “large

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<sup>110</sup> ECtHR (GC), judgment of 10 May 2001, application no. 25781/94, Reports of Judgments and Decisions 2001-IV.

<sup>111</sup> *Stoica v. Romania*, ECtHR, judgment of 4 March 2008, application no. 42722/02, § 60.

majority of the nomad population is merging into” and the “heavy presence of nomad communities” in Naples which have “caused an increase in social alarm.” The operative part of the Nomad Emergency Decree specifically declares a state of emergency “in relation to settlements of nomad communities”. The living conditions and the racial discrimination to which members of the Roma and Sinti community have been and still are publicly subjected constitute an affront to their human dignity. Under the Emergency Measures, they have suffered from and continue to live in constant fear of repetition of measures being taken by the police raiding the settlements, being submitted to compulsory identity checks, house searches, summary evictions and depending on residence status, even for EU citizens, the risk of deportation.

147. The discriminatory actions of the Italian Government have taken place in a hostile atmosphere, with statements by public officials making matters worse rather than trying to reduce tension, failing to fulfil their positive obligation to protect against and prevent such attacks. The High Commissioner on National Minorities of the OSCE noted:

“[T]he measures taken, by in effect targeting one particular community, namely the Roma or Sinti (or “nomads”) along with often alarmist and inflammatory reporting in the media and statements by well-known and influential political figures, fuelled anti-Roma bias in society at large and contributed to the stigmatization of the Roma and Sinti community in Italy.”<sup>112</sup>

#### **Legal Conclusions**

148. The adoption and implementation of the Nomad Emergency Decree and its implementing orders and guidelines violate:

- EC Racial Equality Directive 2000/43/EC, Article 2 § (1),(2),(3) and (4) in conjunction with Article 3(1)(h);
- EC Data Protection Directive 95/46/EC;
- European Convention on Human Rights, Article 3, Article 8, Article 1 of Protocol 1, and Article 14 taken together with Article 8 and Article 1 of Protocol 1.

#### **EXPERTISE OF THE SUBMITTING ORGANISATIONS**

149. The European Roma Rights Centre is an international public interest law organisation which monitors the human rights of Roma in Europe and provides legal defence in cases of human rights violations. Since its establishment in 1996, the ERRC has established a reputation as the leading international non-governmental organisation engaged in human rights defence of Roma in Europe. Since its inception, the ERRC has undertaken extensive research, policy, law and training work in Italy due to the very serious issues Roma face there.<sup>113</sup> Amongst the most important ERRC actions in Italy have been the following:

- Authoring a report issued in July 2008, with partners OSI, COHRE, Romani Criss and RCR exploring the initial impacts of the Nomad Emergency Decree (see below) of May 2008 and similar legislative and policy measures in Italy from 2007 onwards;
- Bringing a legal case before Italian courts and the European Court of Human Rights (ECtHR) challenging the legality of the May 2008 Nomad Emergency Decree and the subsequent implementing orders in Lazio, Lombardia and Campania regions;

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<sup>112</sup> OSCE, 2009, see note 47 above, at page 8.

<sup>113</sup> ERRC publications about Italy and additional information about the organisation are available on the Internet at: <http://www.errc.org>.

- Publishing a full length country report on the human rights situation of Roma and Sinti in Italy;
  - Filing and winning a collective complaint under the Revised European Social Charter against the Italian Government for systemic violations of the rights of Roma and Sinti to adequate housing; and
  - Submitting multiple advocacy submissions on Italy's compliance with international human rights law to human rights treaty monitoring bodies.
150. The Open Society Justice Initiative (OSJI) pursues legal reform activities grounded in the protection of human rights and contributes to the development of legal capacity for open societies. It has offices in Budapest, Hungary; New York, the United States and Abuja, Nigeria. Its principal activities include submitting legal opinions before national and international courts on questions of law in which it has specialised expertise, such as those implicating international norms assuring equality and prohibiting racial and ethnic discrimination. Accordingly, the Justice Initiative has a particular interest and specialised expertise in issues raised by this case. Further information on OSJI can be found at: <http://www.justicieinitiative.org/>
151. osservAzione, Centre for Action Research against Roma and Sinti Discrimination, 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) which examines 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 in local elections. Further information about osservAzione is available at: [www.osservazione.org](http://www.osservazione.org).

## **ANNEX: RELEVANT PROVISIONS OF THE EMERGENCY MEASURES<sup>114</sup>**

### **Decree of the President of the Council of Ministers on 21 May 2008 (Nomad Emergency Decree)**

*- Declaration of the state of emergency in relation to settlements of nomad communities in Campania, Lazio and Lombardi Regions<sup>115</sup>*

“Considering the extremely critical situation that has developed in the territory of the Lombardia 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 above mentioned settlements, due to their extreme precariousness, have caused a situation of serious alarm, with the possibility of serious repercussions in terms of public order and security of the local populations:

Considering the situation of the territory of Milan, where the presence of nomads is evaluated to be six thousand units, and where inside the same urban settlement have been created abusive camps in the abandoned industrial areas, where the large majority of the nomad population is merging into;

Considering the particular urban conformation of the city of Milan wherein the borders of the numerous neighbouring communities are very close to the periphery of the capital of the region, consequently making it impossible to adopt solutions directed to the sustainable distribution of nomad communities without involving all the local concerned institutions;

Considering the extremely critical situation concerns also the province of Naples and Rome, where is also registered the heavy presence of nomad communities in the urban areas and in the surrounding zones, with largely abusive settlements;

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 above mentioned situation, that concerns various levels of territorial Italian Government due to its intensity and extension, cannot be tackled using the instruments provided in the ordinary legislation.

Having regard to the ‘Pact to implement the Strategic plan for solving the Roma emergency in Milan’ signed on 21 September 2006 by the Prefect of Milan, by the President of Lombardia Region, by the President of the Province and the Mayor of Milan;

Having regard to the ‘Pact for safe Rome’ signed on 18 May 2007 by the Prefect of Rome, by the President of Lazio Region, by the President of the Province and the Mayor of Rome;

HAVING REGARD TO the statements of 14 and 16 May 2008 in which the Minister of the Interior, representing the serious situation caused, and the concrete risk to cause further serious situations, has requested to adopt urgent special measures; .

CONSIDERING it necessary to use extraordinary instruments and powers to solve the emergency, applying in this case the requirements provided by Article 5 paragraph 1 of the Law No. 225 of 24 February 1992;

Acquiring the understanding of Campania, Lazio and Lombardia Regions;

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<sup>114</sup> An unofficial translation of the ‘Security Package’ from Italian to English is used here. Original text is available at [www.interno.it](http://www.interno.it).

<sup>115</sup> *Gazzetta Ufficiale*, No 122 of 26 May 2008, p. 9.

Having regard to the decision of the Council of Ministers adopted on the meeting of 21 May 2008;

Decrees:

In accordance with and for the purpose of Article 5 paragraph 1 of the Law No. 225 of 24 February 1997, considering the contents of the preamble, the state of emergency is declared until 31 May 2009 in relation to settlements of nomad communities in the territory of Campania, Lombardia and Lazio Regions.

### **Presidential Ordinances (Implementing Orders)**

*Order of the President of the Council of Ministers on 30 May 2008 (Order No. 3676) Urgent provisions of civil protection responding to the state of emergency in relation to the settlements of nomad communities in the territory of Lazio Region*<sup>116</sup>

“Having regard to the Decree of the President of the Council of Ministers dated 21 May 2008, concerning the declaration of the state of emergency until 31 May 2009, in relation to the settlement of nomad communities in the territory of Campania, Lazio and Lombardi Regions.

Considering the extremely critical situation that has developed in the territory of Lazio Region, with particular reference to the urban areas of the City of Rome and the surrounding zones, due to the presence of numerous irregular third-country and nomad citizens who have settled in a stable manner in these areas:

Considering that the above mentioned settlements, due to their extreme precariousness, have caused a situation of serious alarm, with the possibility of serious repercussions in terms of public order and security of the local populations:

Recognizing the necessity to adopt extraordinary and derogatory measures to urgently solve the state of emergency assigning each intervention to the bodies established for this purpose;

Recognizing the need to implement all the initiatives that can guarantee the respect of the fundamental rights and dignity of the persons, providing certain means of identification to apply the humanitarian and immigration provisions being in force, and instruments that provide access to the main social, welfare and healthcare services, also considering the protection of minors from criminal subjects and organisations that abuse the uncertainty of identity and anagraphical data for the purpose of illegal traffic and serious forms of exploitation.

[...]

#### *Article 1*

The Delegated Commissioner within his area of competence, where applicable, also derogating from the rules of law in force, concerning the environment, territorial landscape, health and hygiene, the territorial planning, the local police, roads and traffic, except the obligation to guarantee the indispensable measures for the protection of health and environment, provides for the completion of the following initiatives:

- a. definition of action programs to solve the state of emergency;
- b. monitoring of the authorized camps occupied by the nomad communities, and the identification of unauthorized settlements;

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<sup>116</sup> Gazzetta Ufficiale, No 127 of 31 May 2008, pp. 7, 9 and 11 respectively. The Ordinances 3677 and 3678 for the Regions of Campania and Lombardy are identical to the ordinance adopted for the Lazio region.

- c. identification and census of persons, including minors, and of families present in the places mentioned in paragraph b), by taking fingerprints;
- d. adoption of the necessary measures, empowering the Police, against the persons mentioned in paragraph c) who are to or could be expelled by virtue of an administrative or judicial measure;
- e. if the existing camps don't satisfy the habitation needs, program for specification of new suitable sites for the authorized camps;
- f. adoption of measures to clean out and restore the field occupied by abusive settlements ;
- g. carry out the first interventions suitable to restore the minimum levels of social and health services;
- h. interventions to promote the social inclusion and integration of the persons transferred into the authorized camps, with particular reference to the measures of support, and to the projects regarding minors, to actions for combating the phenomena of abusive trading and the phenomena of begging and prostitution;
- i. monitoring and promotion of initiatives applied in the authorized camps to support the school attendance and vocational training, and the participation in the activity of realisation and recovering of the habitations.
- j. adopt all the necessary measures to solve the state of emergency.”

**The Guidelines to Implement the President's Minister's Decrees 3676, 3677, 3678 of 30 May 2008 concerning the encampments of nomadic communities in the regions of Campania, Lazio and Lombardy of 17 July 2008 (Implementing Guidelines)**

“[T]he practical implementation of the decrees will be carried out in full respect of the fundamental rights and human dignity, in compliance with the general principles of the legal system and EC directives, as clearly mentioned in Article 3 of the provision.

To this end, the operation entrusted to the Commissari shall not concern specific groups, individuals nor ethnic groups, but all people living in illegal and legal encampments, regardless of their nationality and religion. The Commissari shall avoid any action that might be, directly or indirectly, considered discriminatory.

Monitoring encampments and taking a census of the people and family groups

The census provided for in Article 1, paragraph 2, subpar. c) of the decrees must be considered instrumental in achieving social, assistance and integration goals with the additional aims of realizing the extent and the types of actions needed and proposing initiatives to be carried out quickly, if possible. Therefore, encampments - both legal and illegal ones - shall be monitored and precisely identified. Then a thorough head counting shall be conducted, even with the filling out of a foglio notizie that - taking into account the different local peculiarities - shall only contain the data necessary for the above-mentioned purpose and respecting the fundamental rights and dignity of the people involved, thus excluding all non-pertinent data, such as ethnicity and religion. As regards health data, although the answers must be provided on a voluntary basis, the information needed for possible prevention activities and health assistance can be collected.

As for the data collected this way, once again it is specified that no database will be created in respect of the national and international laws on privacy. The information collected during these activities shall be saved and stored as it is done for all the other citizens by the authorities who are

entitled to do so (Registrar's office, police offices, social assistance offices, local health agencies (ASL), etc.).

#### *Identification*

In order to guarantee the necessary identification - to protect the right to the identity of a person - the decrees establish that as regards the use of identifying techniques, various forms of recognition can be used: descriptive, photographic, anthropometric, and fingerprint recognition. Even though it rests in the discretion of the Commissari what form of recognition should be adopted in order to guarantee the validity of identification, fingerprints shall be used, according to the ordinary procedures provided for by the legislation in force, only if it is not possible to obtain a valid identification through available documents and in certain circumstances as provided for by the Consolidated Text on public security and relevant implementation rules. Once again, all procedures will be carried out respecting the individual and in observance of his/her privacy.

Specific attention will be paid in identifying minors and this type of identification shall be used to protect them even from their parents' abuses or from the abuses of self-defined parents. In particular, it is allowed to fingerprint only youngsters from the age of 14 onwards, when other identification means are not implementable. With regard to children between the age of 6 and 14, fingerprints shall be taken only in order to grant stay permit - in this phase, it must be noted that such procedure will take place only upon request by the individual exercising the legal authority over the child concerned, in accordance with what established by the E.U. regulation n. 380/2008 - or, when necessary, in connection with the competent prosecutor's office at the Juvenile Court and through the judicial police. Below the age of six, fingerprints can be taken by the judicial police only under exceptional circumstances, upon agreement with the prosecutor's office at the juvenile court, when the children have been abandoned or when there is the suspicion they could be victim of a crime. All the data gathered won't be stored in an autonomous collection, but they shall be stored in the archives established by the law, such as the foreigners' archive at the Questura and Prefettura for those requesting a residence permit or applying for citizenship.

#### *Data already collected*

It is to be noted that if the data collected to date are not treated as indicated, they will not be longer usable and/or stored.

#### *Prevention activities, removals and expulsions*

Available data on nomadic settlements in specific areas of Italy show that these locations are not homogeneous in their composition and are inhabited by people who have joined the camps at different times, belong to different ethnic groups, and have different nationalities, including Italian. They are mainly people with no fixed abode who travel across Italy and create temporary irregular settlements here and there.

The activities of recognition, identification and census may also lead to identifying individuals already sentenced to limitations of personal liberties, illegal non E.U. migrants, and/or E.U. citizens who shall be removed on imperative grounds of public security or other circumstances provided for by the law. These people shall be subject to immediate measures, according to the law in force.

All these activities should allow the identification of people who can legitimately live in authorised encampments and are also aimed at eliminating all illegal camps.

As regards the data treatment, it must be carried out in such a way that all data collected are, as usual, sent to the judicial and police authorities as provided for by the law, since these data are collected to guarantee security in addition to all the other crime prevention and suppression instruments.”

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