

I. INTRODUCTION

1. The Open Society Justice Initiative is an operational program of the Open Society Institute (OSI) that pursues law reform activities grounded in the protection of human rights and contributes to the development of legal capacity worldwide. Among other areas of priority, much of the Justice Initiative's work is dedicated to enforcement of international legal prohibitions on discrimination and freedom of expression, and advocating for the rights of non-citizens.

2. The Unione Forense per la Tutela dei Diritti dell'Uomo (UFTDU) is a non-governmental organization founded in 1969 to enhance the legal protection of human rights and fundamental freedoms. The UFTDU, the corresponding national member of the International Federation of Human Rights, is particularly active in the field of capacity-building for legal professionals and legal advocacy before national and international fora.

3. This submission addresses the following issues of concern with respect to human rights in Italy: discrimination and violence against ethnic minorities and migrants; criminalization of irregular migration; violations of the non-refoulement principle under refugee law and human rights law; the creation and maintenance of prolonged statelessness; and threats to freedom of expression including media concentration.

II. ITALY'S INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE RIGHT TO NON-DISCRIMINATION, THE PROTECTION OF REFUGEES, AND THE RIGHT TO FREEDOM OF EXPRESSION

4. Italy is a party to the following international treaties that prohibit racial and ethnic discrimination and set standards for the treatment of aliens, refugees and asylum seekers: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the International Convention on the Rights of Children (CRC) and the Convention relating to the Status of Refugees ("1951 Refugee Convention"). Italy is also a party to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter, whose preamble establishes the principle of non-discrimination and whose Art. 19 sets out obligations for the equal treatment of migrant workers. Italy is also bound by the Charter of Fundamental Rights of the European Union (EU) of which Italy is a member. Chapter III of the Charter is devoted entirely to equality. Italy is likewise bound by European Union Directives, in particular European Union Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the "Racial Equality Directive") and European Union Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of European Union Member States (the "Freedom of Movement Directive").

5. Freedom of expression and information is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR, as well as Article 11(2) of the Charter of Fundamental Rights of the European Union EU. The European Court of Human Rights has recognized, as an essential requirement for the full respect of these rights, that States must take positive measures aimed at guaranteeing a free and pluralist media environment. Italy is also bound by Council Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

6. Italy is not a party to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the European Convention on Nationality, or the United Nations 1964 Convention on the Reduction of Statelessness, three key instruments that protect the rights of migrants and stateless persons. Torture per se is not included in domestic criminal legislation applicable in times of peace, as mandated by Article 4 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Italy is a signatory. Italy has not established an independent national human rights monitoring body of the sort called for by the United Nations' Paris Principles to ensure compliance with its international human rights obligations.

III. DOMESTIC LEGAL CONTEXT

7. The Italian government has increasingly relied on emergency legislation in order to circumvent the parliamentary legislative process. More than half of all legislation since the current Government took power in April 2008 has been adopted via some form of emergency, non-parliamentary procedure - law-decrees ("*decreti legge*"), laws passed by votes of confidence, and governmental decrees declaring a state of emergency (for example, the Decree of the President of the Council of Ministers n. 32041 of 21 May 2008).

Discrimination

8. Italy has introduced discriminatory measures particularly affecting Roma and Sinti that undermine the guarantee of equal treatment enshrined in Article 3 of the Italian constitution. Law 205/1993 defines racial discrimination as both a crime in itself and as an aggravating factor in other criminal acts. The Racial Equality Directive was transposed into Italian law in July 2003 through Legislative Decree 215/2003. Legislative Decree 286/1998, although chiefly treating immigration and discussed below, contains the most widely-used antidiscrimination provisions, prohibiting discrimination on grounds of origin, race, religion as well as nationality in employment and access to public and private goods and services.

9. In 2008, the Italian government adopted a "Declaration of the state of emergency with regard to settlements of nomad communities in the territories of Campania, Lazio and Lombardia regions" (the "Nomad Emergency Decree"). The Nomad Emergency Decree, its three implementing orders, and its implementing guidelines, (known collectively as the "Emergency Measures") granted to the prefects of Rome, Milan and Naples powers "derogating from the rules of law in force" targeted, directly or indirectly, the Roma and Sinti ethnic groups and undocumented third-country nationals. The specific powers included the monitoring of formal and informal housing settlements; conducting a census of the residents (including minors), of these settlements, including fingerprinting and photographing; carrying out measures aimed at clearing "camps for nomads" and evicting their inhabitants; opening of new "camps for nomads"; and the expulsion and removal from Italy of persons with irregular status.

10. While the Emergency Measures, as quoted above, 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. In May 2009, the Emergency Measures were extended to the end of 2010 by a decree of the President of the Council of Ministers, and amended to cover the Piedmont and Veneto regions.

Immigration, Refugees, and Statelessness

11. Immigration law in Italy has been recently amended in ways that violate international norms and European Union law. Immigration matters are regulated by Law Decree 286/1998 (commonly known as the “Consolidated Text”) and its subsequent amendments, which set out entry requirements, stay conditions, visa procedures, processes for family reunification for third-country nationals in Italy, as well as rules for asylum petitions and granting of refugee status.

12. Law 125/2008, which modified the Consolidated Text and amended the Italian Penal Code, made being an irregular migrant at the time of committing a crime an aggravating factor, and authorized an increase in criminal sentences by as much as one-third for convicted persons not legally resident in Italy. The same law introduced, among other things, a criminal penalty for those convicted of renting accommodation to undocumented migrants (with penalties ranging from six months to three years imprisonment and possible seizure of the property). Law 125/2008 also authorized the expulsion of EU citizens who are sentenced to more than two years’ imprisonment for commission of a crime. In September 2008 the European Commission raised its concern about this provision, which appears to be in plain conflict with the Freedom of Movement Directive’s restriction of expulsions to situations where the conduct of an EU citizen represents a genuine, actual, and serious threat against the fundamental interests of society.

13. In July 2009, the Italian parliament adopted Law 94/2009 on Provisions Relating to Public Safety (“the 2009 Security Package”), which amended the Consolidated Text so as to criminalize irregular entry into Italy as well as stay without a valid residence permit. Article 1(16)(a) of this new law authorizes fines ranging from €5000 to €10,000 for unauthorized stay. Article 1(22)(m) of the Law provides that failure to comply with expulsion orders is punishable by a sentence of one to four years’ imprisonment. Undocumented migrants can now be held in detention for up to six months before they are expelled from Italy, increased from three months under previous laws. Case law of the European Court of Human Rights makes clear that detention of aliens should be a last resort, not a standard practice, and should only be done when there is a concrete view to deportation. The authorities must act with due diligence to effectuate deportation and must not keep migrants in detention unnecessarily simply because they have no residence status (see, e.g., *Chahal v the UK*). Imposing a term of imprisonment for failure to comply with expulsion orders may amount to detention for lack of legal status.

14. The Consolidated Text (Law Decree 286/1998) provides that asylum-seekers – those who have deposited an asylum claim with the Italian authorities – are legally allowed to stay on national territory until their petition is fully examined by decentralized commissions charged with making determinations as to refugee status and other forms of international protection. Recent Italian policies, described below in the ‘Practices’ section, undermine this provision.

15. Although Italian law grants citizenship to descendants of Italian citizens, naturalization for individuals without Italian ancestry requires 10 years of legal residence and procedures are cumbersome, which contributes to a substantial population of stateless persons (see below under ‘Practices’).

Freedom of Expression

16. Italy’s domestic legislation presents several concerns relating to freedom of expression: (a) the failure to properly regulate conflicts of interest of senior government officials with significant holdings in the media industry; (b) the flawed appointment procedure of the Board of the Public Service Broadcasters; (c) various shortcomings in the anti-trust provisions related to the media sector (known as the Gasparri Law); and (d) the

recent reintroduction in the Penal Code of the offence of insult of public officials.

17. Conflict of interest in the Italian media is governed by the Law on Regulations in the Field of Solving Conflicts of Interest, no. 215 of 20 July 2004. In 2004, the Council of Europe concluded that the Italian statute regulating this conflict of interest was inadequate, primarily because its restraining provisions apply only to managers of a conflicted company and not to its owners or controlling shareholders. In 2006, the U.N. Human Rights Committee expressed its own concern about the inadequacy of the existing law to address the issue of conflict of interests in Italy.

18. The independence of public service broadcaster RAI is supposedly assured by Law No. 112/2004– known as the Gasparri Law. In reality, RAI’s independence is seriously undermined by the procedure established in the law that regulates the appointment of RAI’s board of directors: RAI’s board is composed of nine members, of whom two are appointed by the Ministry of Economy, which, as RAI’s majority shareholder, also selects the president of the board. The remaining seven board members are elected by a special parliamentary commission: four of them are nominated by the parliamentary majority and three by the opposition, with the result that six out of nine board members are selected by the ruling coalition. This is in stark contrast with the Council of Europe guidelines on the independence of public service broadcasting which state that “the rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference.” The U.N. Human Rights Committee in its 2006 Concluding Observations on Italy expressed concerns about the failure of the Gasparri Law to properly “address the issue of political influence over public television channels”.

19. The anti-trust provisions of the Gasparri Law establish that a single operator cannot be allowed to control, at the same time, more than 20 percent of the total number of national television channels AND more than 20 percent of the total revenues of the entire media sector, known as the “Integrated Communications System” (SIC). The SIC is an artificial “media market” imagined by the Gasparri Law, encompassing television, publishing, radio, internet, direct advertising activities, sponsorships, revenues from RAI’s annual licence fee, sales of movie tickets, rented or sold DVDs, and direct state grants to print publishers. As a result, the anti-trust threshold has been defined arbitrarily, omitting key indicators, such as audience share or control of the advertising market, in its definition of a dominant position in the broadcasting market. The SIC is so vast and heterogeneous that it dilutes the definition of ‘dominant position’, allowing an individual media company to dominate specific markets or media such as television, while at the same time remaining below the 20 percent threshold for the whole sector. As noted by the European Commission for Democracy through Law (the Venice Commission), this is out of line with European best practices. It has also been criticised by the U.N. Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression (“UN free expression special rapporteur”) following his October 2004 mission to Italy, when he concluded that “the general definition of the ‘integrated system of communications’ does not allow for precise predictions about its extent in economic terms, which might lead to the expansion of the share of advertising revenue of the major economic actors.”

20. A provision included in the 2009 Security Package has reintroduced, with some modifications, the crime of insult (*oltraggio*) of a public official, which had been repealed in 1999. The new offence makes it a crime, punishable by up to three years of imprisonment, to offend “the honour and prestige of a public official who is performing an official duty and in the exercise of his powers.” The punishment is higher if the “insult” consists of a factual allegation that cannot be proved as truthful. Although the new provision defines more narrowly than its predecessor the circumstances of criminal liability, a criminal provision that grants special protection to

public officials is inconsistent with international free expression standards, as noted by the U.N. free expression special rapporteur, and the Human Rights Committee, who have called on States to repeal legislation criminalising insult of public officials.

IV. PRACTICES THAT VIOLATE ITALY'S INTERNATIONAL OBLIGATIONS

Implementation of Italy's 'Emergency Measures' Constitutes Discrimination against Roma and Sinti

21. The Emergency Measures, described above in section III, have led directly to the impermissible discriminatory treatment of Roma and Sinti by: (a) defining the very presence of the Roma and Sinti (called 'Nomadi' in the Emergency Measures) as grounds for a state of emergency, creating an intimidating, hostile, degrading environment; (b) directly discriminating against Roma and Sinti by mandating a compulsory census on the basis of their accommodation in camps for nomads created by the government; (c) allowing for the creation of an ethnic database of Roma and Sinti without adequate safeguards; (d) allowing for unlawful searches of the homes of Roma and Sinti; and (e) permitting destruction of Roma and Sinti settlements and effective evictions without provision for adequate alternate housing.

22. As part of the Emergency Measures, the Italian government has conducted an official census of Roma and Sinti, which has included a collection of fingerprints, photographs, information on ethnic background and religion, and other personal data. This ethnicity-specific census is in direct violation of ICCPR Art 17 (guaranteeing the right to respect for family life), as well as ICCPR Art 26 (the right to non-discrimination). Documentation carried out by non-governmental organizations indicate that many Roma and Sinti felt coerced into complying with this census, either because they felt they did not have any other choice, or because police and NGO census takers provided false information about the nature and purpose of the census to Roma and Sinti living in the camps. There are documented cases in which both Italian and non-Italian Roma and Sinti were subjected to the census under explicitly forceful and intimidating circumstances. For example, in the semi-formal Camp Tor di Quinto-Baiardo and the formal Camp Tor de Cenci in Rome, where part of the census was conducted in July 2008, officials were reportedly aggressive and violent toward residents, including searching residents' homes using dogs and without a court order. The Italian government has not made clear what it will do with the sensitive information, including fingerprints and information on minors, collected in the database.

23. In the course of implementation of the Emergency Measures, Roma and Sinti communities were subjected to unlawful searches. A number of their settlements were destroyed without advance notice, consultation, or respect for due process of law. The authorities have carried out evictions without providing assurances of adequate alternative accommodations. Several such raids took place in Milan and Turin in 2007. These forced evictions without remedy are in direct violation of Arts 2 and 17 of the ICCPR as well as Art 11 of the ICESCR.

Criminalization of Irregular Entry and Stay of Migrants by the '2009 Security Package'

24. Employees of public institutions such as municipalities, hospitals, and schools have a general duty under Italian law to report crimes. By criminalizing undocumented residence in Italy, the 2009 Security Package dissuades irregular migrants from accessing necessary public services. Italian human rights organizations are concerned that migrants may pull their children out of public schools for fear that teachers will act on their newly-imposed obligation to report illegally resident parents to the police. Even prior to the criminalization of illegal residence by the Security Package, some students were not permitted to sit for their bachelor exams on the grounds of their irregular immigration status. This constitutes a violation of the right to education provided

for in Article 28 of the CRC and Art 13 of the ICESCR. Similarly, there is concern that individuals may forego medical care rather than risk that healthcare personnel at public institutions will turn them in as undocumented migrants. Doctors and other healthcare workers have suggested that complying with the obligation to report illegal residents as criminals would violate their Hippocratic Oath.

25. The 2009 Security Package and the inefficiency of the expulsion system are also likely to worsen overcrowding and related conditions in Italian prisons and detention centers. The July 2009 decision of the European Court of Human Rights in the case of *Sulejmanovic v Italy* has already found Italy in breach of the prohibition of inhuman and degrading treatment due to poor detention conditions. Many Italian magistrates fear that the 2009 Security Package will only increase the number of criminal cases in an already over-burdened justice system. Although Italian prisons officially have capacity for only 43,000 prisoners, they currently hold 65,000 inmates, of whom 37.5 percent are foreigners. Following the entry in force of the 2009 Security Package, mass arrivals in centers for identification and expulsion of foreigners have caused unrest in a number of facilities.

Repeated Failure to Effectively Punish Acts of Racially Motivated Violence

26. In the past two years Italy has witnessed numerous acts of racist and ethnic violence against Romanians, Italian and non-Italian Roma, and persons of African descent. In May 2008, a group of about 300 to 400 local residents in Ponticelli, Naples launched an assault against one of the biggest Roma camps in the district, home to 48 Roma families, shouting insults and threats, throwing stones at shacks and caravans, overturning cars, and setting buildings and automobiles on fire. In September 2008, a young immigrant from Burkina Faso was murdered by a shopkeeper and his son after they caught him stealing packets of biscuits from their snack bar near Milan railway station. Witnesses said that his attackers hurled racial abuse at the victim and then shouted "we'll kill you" as they repeatedly struck him with iron bars, leaving him lying in blood. It appears that many attacks have been carried out with tacit police approval, and subsequent prosecutions of those responsible, when they occurred, have not consistently included charges of ethnically-discriminatory motivation as an aggravating factor.

27. In February 2009, law enforcement officers bulldozed a Romanian camp in Rome, leaving at least 50 people homeless. In the immediate aftermath, attacks were carried out by gangs of young people against Roma, Romanian and foreign citizens but apparently no one has been charged or tried for these attacks. The failure to sanction effectively and consistently acts of racially motivated violence is a clear breach of Italy's obligations under ICCPR's Article 2 (requiring states to provide victims an effective remedy), and Articles 6 and 7 (requiring states to protect the right to life and prohibiting torture or cruel, inhuman or degrading treatment or punishment respectively).

28. Rather than condemning acts of ethnic violence, Italian officials have publicly condoned them. In 2008, the Minister of Interior stated, "As for vigilante attacks on immigrants, that is what happens when Gypsies steal babies, or when Romanians commit sexual violence". (Roberto Maroni, Italian Minister of Interior, quoted in *The Times*, 29 May 2008.) Prior to the attacks on Roma settlements in Naples, current Minister for Institutional Reforms Umberto Bossi was reported as declaring that "it is easier to destroy rats [than to] wipe out the gypsies." (<http://rizomatic.wordpress.com/2009/05/15/berlusconis-frighteningly-successful-racism-adetola-lawal/>) Repeated remarks such as these from the highest levels of government create an atmosphere of contempt for human rights standards, impunity, and hostility towards immigrants and minorities.

***Respingimento* (“Push Back”) Policy Of Capturing Persons In Italian Or International Waters And Summarily Sending Them To Libya**

29. As part of a 2008 bi-national agreement with Libya, the Bengasi Treaty, a new policy of ‘push back’ (*respingimento*) was put into practice in May 2009. According to article 19 of the treaty, the Italian navy may patrol the Libyan coast, capture persons found there (as well as in international or Italian waters), and forcibly send them to Libya, without affording any opportunity to claim asylum in Italy. In addition, there is a serious risk that Libyan authorities will either deport non-Libyans in need of international protection to unsafe third countries or subject them to torture or ill-treatment.

30. According to non-governmental sources, since May 2009, 1,136 persons have been “pushed back” - i.e. found on the seas and taken by the Italian navy - to Libya, and some of them have suffered violence at the hands of the Italian police. Seventy to 75 percent of those who land in Italian territory (Sicily) via the sea without meeting the requirements for legal admission submit applications for some form of international protection; these applications constitute 70 percent of the total number of asylum applications examined in Italy each year. Whatever the intent behind its adoption, the policy of *respingimento* has the effect of undermining Italy’s obligation to give protection to asylum seekers. This violates the principle of *non-refoulement* embodied in Article 33 of the 1951 Refugee Convention, Article 3 of the UN CAT, and Article 3 of the ECHR. Italy’s *refoulement* of persons is particularly troubling given the lack of oversight of Libya’s treatment of those sent there by Italy, and Libya’s non-accession to the 1951 Refugee Convention, making it impossible for individuals to claim asylum in Libya.

31. The United Nations High Commissioner for Refugees (UNHCR) has criticized the *respingimento* policy, expressing “grave concern” at the lack of consideration of asylum claims and failure to provide protection. The UNHCR interviewed 82 migrants intercepted on the high seas on July 1, 2009 and subsequently sent to detention camps in Libya, finding that a “significant number from this group are in need of international protection.” The *respingimento* policy has also provoked the concern of the European Committee for the Prevention of Torture which on 27-31 July 2009 conducted an ad hoc special investigation of the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment. Recently, a team of lawyers of UFTDU, one of the authors of this submission, lodged an application with the European Court of Human Rights alleging that *respingimento* violates the principle of non-refoulement, the right to an effective remedy and the prohibition on collective expulsion.

Failure to Resolve the Situation of Stateless Individuals

32. Thousands of Roma in Italy, including many children, are Italian-born descendants of individuals from the former Yugoslavia. Many have missed the 12-month deadline for applying for citizenship upon attaining age 18; they now have no way to naturalize and are effectively stateless. This is a violation of CRC Article 7, which mandates that states should grant nationality to children born on their territory who would otherwise be stateless.

33. Cumbersome naturalization procedures have resulted in Italy having one of the lowest naturalization rates (for all modes of acquisition apart from spousal transfer) in the OECD. In addition to stateless Roma, large numbers of other *de facto* stateless persons, and rejected asylum seekers who cannot be returned to their country of origin, linger in a perpetual state of citizenship limbo without clear rights to political participation.

Major Conflicts of Interest presented by Prime Minister Berlusconi's Ownership Position in the Media

34. The April 2008 re-election of media magnate Silvio Berlusconi as prime minister has worsened serious conflict of interest issues in Italy: Berlusconi, the owner of one of the largest private television and communications group, is also the head of government and the leader of a Parliamentary coalition that wields effective control over the public service broadcaster, RAI, a competitor of his private media group. This state of affairs, unprecedented among established democracies, has eroded the pluralism of media in Italy, as it leaves Mr. Berlusconi effectively in control of both the public broadcasting system and his dominant Mediaset empire. Content monitoring reports of the Authority for the Guarantee of Communications (available at www.agcom.it) provide evidence that RAI has shifted its coverage in favor of the Government majority.

Lack of Media Competition in Italy's Broadcasting Market

35. The Italian broadcasting market is still dominated by the *de facto* duopoly of the public broadcaster RAI and Berlusconi's Mediaset group. In July 2009, the President of the Authority for the Guarantee of Communications ("AGCOM") announced that a third private operator, satellite pay-TV broadcaster Sky Italy, had surpassed Mediaset in total revenues for 2008. The findings were hailed by the Government as evidence of the demise of the traditional RAI-Mediaset duopoly and of the opening of the television market to pluralism. However, such claims are grossly misleading when key competitive indicators such as audience and advertising shares are considered. RAI and Mediaset continue to jointly control around 84 percent of the ratings versus some 10 percent of Sky Italy's channels. In addition, Sky Italy's revenues derive mainly from its annual subscription fees, whereas the other two broadcasting entities derive most of their revenue from advertising. Approximately 55 percent and 28 percent of Mediaset's and Rai's revenues, respectively, come from advertising; Sky Italy derives only six percent of its revenues from advertising.

Reinforcing the Dominance of Existing Broadcasters through the Shift to Digital Broadcasting

36. The final deadline for the switch from analogue to digital broadcasting in Italy is set by law for December 2012. As expressed by the UN free expression special rapporteur, serious concerns remain that the Gasparri Law and subsequent acts regulating the transition from analogue to digital TV do not guarantee media pluralism, both in terms of the variety of programme content and increased market access for new media operators.. In July 2006, the European Commission announced the start of an infringement procedure against Italy for favoring incumbent analogue broadcasters (including RAI and Mediaset) in the acquisition and use of new digital frequencies in breach of the non-discrimination principle set out in the EC Directives on electronic communications. In January 2008, the European Court of Justice found that the then-existing regulatory structure in Italy deterred entry of new operators in the digital broadcasting market, while favoring existing analogue broadcasters. Following the adoption in 2008 of a new plan setting criteria for the assignment of digital frequencies, the European Commission suspended the infringement procedure, reserving the right to resume it at any time while monitoring the implementation of the new plan. Nevertheless, concerns persist about Italy's failure to address the pluralism deficit and the impending 2012 deadline.

Government Favoritism in Allocating Government Advertising

37. A recent survey of advertising trends carried out by a reputed independent research group found that during the first quarter of 2009 the office of the prime minister allocated almost 93 percent of the total advertising spending on private television to the three Mediaset channels controlled by the prime minister's holdings. (The public RAI channels are legally required to broadcast government ads for free.) In aggregate, the amount spent by the current Government to purchase advertising time in private TV channels soared by 237 percent, compared to the same period in 2008. At the same time, the share of institutional advertising placed in print media and internet-based media has plummeted by 98 percent and 56 percent respectively. These findings have fuelled concerns that the Government's practices are steering institutional advertising away from the print media – in particular those that are most critical of its policies – with the purpose or effect of undermining their commercial viability in a time of unprecedented financial crisis, while at the same time favoring the prime minister's television group.

Lack of Compliance with the Judgments of International Courts

38. Recently, Italy refused to comply with interim measures indicated by the European Court of Human Rights not to deport a number of individuals to Tunisia pending the examination of their cases by the Court (the cases of Ben Khameis in June 2008, Mourad Trabelsi in December 2008 and Ali Ben Sassi Toumi in August 2008). The interim measures were ordered on the grounds that the individuals would be at risk of torture and or inhuman or degrading treatment. By endangering the affected individuals' rights not to be tortured or subjected to inhuman and degrading treatment, Italy's action violates ECHR Art 1 (stating that all States Parties undertake to secure the Convention's rights to everyone within their jurisdiction) and reflects a government policy in tension with the obligation to comply with international human rights obligations and cooperate with international human rights mechanisms.

V. RECOMMENDATIONS TO THE UPR WORKING GROUP

39. The Justice Initiative and the Unione Forense per la Tutela dei Diritti dell'Uomo urge the UPR Working Group of the Human Rights Council, when it conducts its Universal Periodic Review of Italy's general human rights practices at its upcoming session, to address the disturbing patterns of human rights violations described herein. In particular, we urge the Human Rights Council to inquire of the Italian state representatives as to the following:

- What steps the state will take to remove from the statute books those portions of the Emergency Measures which single out the Roma and Sinti ethnic groups for invidious treatment by virtue of their presence in the country, and ensure that the special powers granted to the prefects of Rome, Lombardy, Campagna, Piedmont and Veneto under the "Emergency Measures" are not abused in violation of Italy's constitutional and international obligations;
- How it will guarantee, in light of the "2009 Security Package" criminalizing illegal entry or stay in Italy, that all individuals in Italy, but children in particular, enjoy their basic rights to education and health care;
- What measures it will adopt to ensure that the sensitive data collected pursuant to the "Nomadi" census conducted pursuant to the Emergency Measures is adequately protected and used only for lawful purposes;
- What measures it will take to ensure effective prosecution of persons engaged in ethnically-motivated

violence, and prevent statements by public officials that appear to condone such acts;

- What steps it will take to guarantee effective access to a fair and non-discriminatory procedure capable of providing individualized consideration of all claims for asylum in Italy;
- The measures it is taking to address the ongoing media pluralism deficit, both in the interim period and after the planned digital switchover in 2012;
- The trend of steering government advertising, in non-transparent fashion, away from print and other non-broadcast media in favor of television channels, and especially those owned by Prime Minister Berlusconi;
- The reintroduction of the crime of insult of public officials and its compatibility with international standards on freedom of expression.

40. In its concluding observations, we urge the UPR Working Group to recommend to Italy that it:

- Immediately suspend the operation of the discriminatory 2008 Emergency Measures (“Decreto del Presidente del Consiglio dei ministri 21 maggio 2008 - Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia”), together with related Ordinances (“3676/3677/3678 - Disposizioni urgenti di protezione civile per fronteggiare lo stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio della regione Lazio/Campania/Lombardia”) and the “Decreto del Presidente del Consiglio dei ministri 28 maggio 2009 Proroga dello stato di emergenza per la prosecuzione delle iniziative inerenti agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia ed estensione della predetta situazione di emergenza anche al territorio delle regioni Piemonte e Veneto,” which target the Roma and Sinti ethnic groups as such, as well as third country nationals, as threats to public order and security;
- Destroy the sensitive information, in particular fingerprints and personal pictures, taken of Roma and Sinti during the 2008/2009 Nomadi census
- End all interdictions and summary returns of boat migrants to Libya;
- Ensure that all persons interdicted have access to a fair and non-discriminatory procedure for determining protection needs, including asylum and subsidiary protection;
- Ensure that relevant criminal law provisions are effectively implemented to punish the perpetrators of ethnic violence against Roma and Sinti, as well as ethnic or nationality-based violence against persons of foreign origin;
- Take measures to prevent the use of illegal force by the police against anyone, and in particular Roma, Sinti and third country nationals;
- Ensure that all persons present on Italian territory, and in particular Roma, Sinti and third country nationals, are treated with dignity and free from discrimination, particularly in access to health care and education, the right to marry, and registration of births;
- Repeal legislation that criminalizes illegal entrance and stay and (re-) introduce legislation that deals with (illegal) immigration issues under administrative and immigration law;
- Comply with its obligations under the Refugee Convention and the prohibition of *refoulement* in the ICCPR and UNCAT in relation to migrants arriving by sea;
- Guarantee that all stateless children born on its territory acquire Italian nationality;
- Consider accession to the Convention on the Reduction of Statelessness and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

- Respect and implement decisions of international and regional human rights monitoring bodies;
- Amend the 2004 law on conflicts of interest of senior officials to extend its restraining provisions to owners and controlling shareholders of media companies;
- Amend the Gasparri Law by introducing specific measures to:
 - a) reform the appointment scheme for RAI's board of directors to ensure its impartiality and independence from the government of the day and other improper political or business influences;
 - b) define dominant positions in the broadcasting market in function of (among other factors) the operators' advertising and audience shares, in line with European best practice; make those thresholds applicable to well-defined, separate markets within the Integrated Communications System; and introduce appropriate rules on permissible revenue shares within each of those markets.
- Establish an independent human rights body in accordance with the Paris Principles.