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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Rapporteur on contemporary forms of slavery, including its causes and consequences on her visit to Italy**

**Comments by the State\***


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\* The present document is being issued without formal editing.

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**Ministry of Foreign Affairs and International cooperation - Inter-ministerial Committee for Human Rights Comitato Interministeriale per i Diritti Umani**

**Italy's remarks on the country mission report of the UN special rapporteur on contemporary forms of slavery, including its causes and consequences (A/HRC/42/44/Add. 1, dated May 24, 2019)**

Further to the UN Special Rapporteur's mission to Italy undertaken from 3 through 12 October 2018, the Government of Italy is in a position to provide the following remarks (Italy also kindly requests the UN Special Rapporteur to make corrections in the mission's report under reference, since a few factual errors have been detected in):

**Introductory remarks**

1. The Italian (rigid) Constitution, coeval with UDHR, determines the political framework for action and organization of the State.
2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the principle of formal and substantial equality and the respect for human rights are among the main pillars

(For additional information, please kindly refer to Common Core Document of Italy forming part of the reports of States parties - UN Doc. HRI/CORE/ITA/2016).

**Turning to specific issues**

3. Taking into account the focus on labor exploitation of migrants in the agriculture sector, an updated representation is provided in line with Articles 18 and 22, para.12 quater, of Legislative Decree No. 286/98 (TUI –Unified Text on Immigration).

*Article 18 of the TUI*

4. The protection of victims of trafficking is ensured in the Italian legal system by a plurality of normative interventions. Firstly, mention has to be made of the SOPs (Standard Operating Procedures)<sup>1</sup> applicable to Italian Hotspots, which describe how, from the moment migrants arrive at the Italian coasts, the utmost attention is paid to victims of trafficking, including through information about legal status and the following procedural steps. Once a possible case of trafficking in human beings has been identified, the person concerned is separated from the remaining flow of people, during the identification phase, and transferred to a special facility with relevant reception-related features. In such situations, we proceed with the necessary communications to the Judicial Authority. The victim has the right not to file a complaint and still s/he is entitled to have access to the protection paths in accordance with legislation in force. The reference to the above SOPs document, in particular Item B.9.2., makes it possible to clarify that, among the stakeholders involved in the specific activities intended for potential victims of trafficking, in addition to the Italian State Police,

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<sup>1</sup> The SOPs (Standard Operating Procedures), issued on June 28, 2016, were drafted by the Department on Civil Liberties and Immigration and by the Department of Public Security (Central Directorate on Immigration and Border Police) in agreement with the Central Anti-Crime Department, on the issues of competence of the latter. This document was prepared also with collaboration from the European Agencies at the landing sites with their own respective staff (FRONTEX, EASO and EUROPOL). These procedures correspond to the wishes of the European Commission that requested Italy to draw up a specific Road Map in which to indicate the measures for improving the capacity, quality and efficiency of our system in the areas of asylum, the first reception, and repatriation. This document, signed by the Chief of Police and the Head of the Department on Civil Liberties and Immigration, was sent to the Prefects and Quaestors for implementation.

the IOM and Europol, there are also cultural mediators, who can facilitate the communication.

5. Furthermore, by recalling section B.8 of the above document, entitled: "Provision of comprehensive information on the functioning of the international protection procedures as well as on relocation and assisted voluntary repatriation", it is possible to highlight how these activities are intended for an informed knowledge of the applicant for international protection.

6. Article 18 of the TUI provides for a special residence permit, which can be issued to victims of trafficking. Pursuant to paragraph 6-bis of Article 18 of the TUI, this provision is applicable, as compatible, also to citizens of Member States of the European Union who are in a situation of serious and actual danger.

7. In this respect, it is to be recalled Legislative Decree No. 24/2014, which, by translating European Directive 2011/36/EU concerning the prevention and repression of trafficking in human beings and the protection of victims, integrated the aforementioned Article 18 of Legislative Decree No. 286/1998. This provides that a single program of emergence, assistance and social integration is applied to foreigners victims of trafficking, on the basis of the national action plan against trafficking and the serious exploitation of human beings<sup>2</sup>, as established by Decree of the President of the Council of Ministers, together with the Minister of Interior, the Minister of Labor and Social Policies, and the Minister of Health<sup>3</sup>.

8. Furthermore, on December 3, 2018, it was published in the Official Journal No. 281, Act No. 132/2018 (in force since 4 December 2018), establishing the conversion into law with amendments of Law-Decree No. 113/2018 (in force since 5 October 2018). These pieces of legislation, impacting on international protection and immigration, fall within national legislation which has been amended, inter alia, by superseding the stay permit for "humanitarian reasons" and the parallel introduction of special cases of a residence permit which, in any case, guarantee particular forms of protection against expulsion from the national territory, in an exceptional situation in which a foreigner is.

9. At the same time, some types of residence permits, which in any case made direct reference to humanitarian reasons, took the name of residence permits for special cases: among these ones, it is to be mentioned also the aforementioned residence permit referred to in Article 18 (stay permit for social protection reasons), the most important features of which are reported below.

10. Article 18 of the TUI concerning the residence permit for social protection purposes, as mentioned, aims to the protection of victims of trafficking in human beings. This permit has a duration of six months and can be renewed for a year term or for a longer period as required for justice reasons, besides being revocable when the requirements that justified its release no longer exist.

11. The aforementioned permit also entitles to access to welfare and study services, as well as the registration in the employment lists and the performance of paid employment, subject to the minimum age requirements. If, on expiry of the residence permit, the person concerned appears to have an employment relationship in progress, the permit may be further extended or renewed for the duration of the this labour relationship. Furthermore, the residence permit under reference can be converted into a residence permit for study purposes if the holder is enrolled in a regular course of study.

12. The residence permit for special protection is also issued to victims of trafficking, upon proposal of the Public Prosecutor or the Social Services of the local authority, to allow the victim to exit from violence and to participate in an assistance and integration program. The release of the residence permit under reference is not subject to the victim's willingness

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<sup>2</sup> The National Plan of Action against Trafficking in Human Beings and Serious Exploitation, 2016 – 2018, was adopted by Council of Ministers on 26 February 2016.

<sup>3</sup> Decree, dated 16 May 2016.

to collaborate with the investigative bodies. Article 18 of the TUI consists precisely in allowing the protection of victims of trafficking that is not an instrument of prosecution.

*Article 22, paragraph 12-quater, of the TUI*

13. As known, Legislative Decree No.109/2012 translated EU Directive 2009/52 into the current domestic immigration normative framework. This amended Articles 22 and 24 of Legislative Decree No. 286/1998, besides envisaging a transitional provision aimed at the emergence of irregular employment relationships.

14. With regard to the amendments made by the legislator to Article 22, it is to be highlighted the insertion, after paragraph 12, of paragraphs 12-bis, 12-ter, 12-quater and 12-quinques. While paragraph 12 of the same article 22 already provided for the specific type of crime in the event of the mere employment by an employer of a foreigner without a residence permit, the legislator with paragraph 12-bis has intended to introduce aggravating circumstances in cases of irregular employment accompanied by specific labor exploitation, attributable to the cases referred to in article 603-bis of the penal code, third paragraph.

15. In this context, paragraphs 12-quater and 12-quinques of the aforementioned Article 22 of the TUI are of relevance. They envisaged the possibility of issuing a specific residence permit for humanitarian purposes, to be granted by the Quaestor to the foreigner concerned, who: 1) had reported his/her employer; 2) and would cooperate in the criminal proceedings against his/her employer.

16. In light of the above provisions, the Police Headquarters (Questure), upon proposal or with the favorable opinion of the Public Prosecutor, oversaw the release of the prescribed residence permit with semiannual validity, renewable upon expiry, until the definition of the criminal proceedings.

17. As already mentioned, on 3 December 2018, Act No.132 2018 (in force since 4 December 2018), establishing the conversion into law with amendments of Law Decree No. 113/2018 (in force since 5 October 2018) was published in Official Journal No. 281.

18. On a more specific note, the new provisions have impacted on the following articles of Legislative Decree No. 286/1998 (TUI): Article 19, paragraph 2, letter d-bis) of the Unified Text on Immigration, introduces the new residence permit for medical treatment; Article 20-bis of the TUI provides for the new residence permit for natural disaster; Article 42-bis of the TUI provides for a residence permit for acts of particular civic value.

19. At the same time, some types of residence permits that made direct reference to humanitarian reasons have taken the name of residence permits for special cases under TUI. We refer, in particular, to the previously mentioned residence permit referred to in Article 18 (residence permit for social protection purposes); the one in Article 18-bis (residence permit for victims of domestic violence); and the one in Article 22, paragraph 12-quater (residence permit for particular labor exploitation).

20. The above residence permits, with the latest normative amendments, have changed only the name and result in institutes to protect the foreigner victim of violence or exploitation. Of these permits, the characteristics referred to in Article 22 of the TUI, concerning the residence permit for serious labor exploitation are detailed below.

21. This residence permit can still be issued in cases of serious labor exploitation by the Quaestor, upon proposal or with the favorable opinion of the public prosecutor, for the foreigner who has filed a complaint and cooperates in the criminal proceedings initiated against the employer. This residence permit can be issued for a period of six months and can be renewed for one year or for the longer period required for the definition of the criminal proceedings. The residence permit is revoked in the event of conduct incompatible with its purposes, when reported by the public prosecutor or ascertained by the Quaestor, or if the conditions that justified its release cease to exist. The term "special cases" entitles to work and can be converted, on expiry, into a residence permit for paid employment or self-employment.

22. Against this background, mention has to be made also of the Inter-ministerial Decree dated 10 February 2017, aimed at determining the methods and terms to guarantee the foreign

citizens concerned the information referred to in Article 6, paragraph 2, of EU Directive 2009/52, concerning the methods by to assert their rights and to report the employer. To this end, this inter-ministerial decree has set up an information model which is notified to the party concerned, by the Office or Body that detects the foreigner. A copy is delivered to both the person concerned and the competent Police Headquarters, for the purpose of adoption of the repatriation measure.

23. Moreover, it should be noted that, for the purposes of the application of Article 22, paragraph 12-ter of TUI (which states that “with conviction verdict the judge applies the accessory financial administrative sanction amounting to the average cost for the repatriation of the foreign worker unlawfully hired”), an inter-ministerial decree was issued (Decree dated December 22, 2018, No. 151), as already provided for by Law Decree No. 109/2012, for the determination and updating of the average cost of repatriation. This decree was issued jointly with the Ministry of Interior, the Ministry of Justice, the Ministry of Economy and Finance, and the Ministry of Labor and Social Policies.

24. Please kindly refer to the data below relating to the first releases of the residence permit for social protection and for serious labor exploitation, respectively, referring to the years 2017, 2018,4 and 2019 (as at 10 June 2019), as broken down by gender.

<b>Residence permits released to foreigners victims of labour exploitation and trafficking</b>			
Year	<b>Art. 22</b> (permit for serious labour exploitation)	<b>Art. 18</b> (permit for social protection – serious labour exploitation)	<b>Art. 18</b> (social protection permit – Trafficking)
2017	<i>M</i> 4	<i>M</i> 1	<i>M</i> 197 <i>F</i> 162 <i>Tot.</i> 359
2018 (up to 5.10.18)	<i>M</i> 2	<i>F</i> 1	
	<b>Art. 22</b> (permit for serious labour exploitation – special cases)	<b>Art. 18</b> (permit for social protection – special cases)	
2018 (from 5.10.18)		<i>M</i> 3 <i>F</i> 11 <i>Tot.</i> 14	
2019 (up to 10.6.19)	<i>M</i> 4 <i>F</i> 2 <i>Tot.</i> 6	<i>M</i> 29 <i>F</i> 13 <i>Tot.</i> 42	

Source: Ministry of Interior

Source: Ministry of Interior

25. As for the data mentioned in the Flai-Cgil Report (para. 47, page 8): “According to estimates, around 430,000 workers are employed each year through caporali, out of whom over 100,000 suffer severe exploitation”, please kindly note that 430,000 workers are not employed each year through Caporali. Rather 430,000 workers are at risk of being employed by Caporali.

26. On a more general note, within the domestic institutional framework, mention has to be made of the role played by Equality Councillors for equal opportunities in the workplace.

<sup>4</sup> Please kindly note that the terms concerning stay permits under reference referred to the years 2017 and part of 2018 are different from those ones starting from the period 5 October 2018 (when Decree No. 113/2018 entered into force) until the date of the latest data collection hereunder reported (2019).

They act as public officer in accordance with Arts. 12-20 of Legislative Decree No. 198/2006, as amended whose tasks include monitoring cases of gender-based discrimination at the workplace, with regard to labour market entry, career advancement, training, salaries, dismissal, and pension. They promote anti-discrimination in active policies, positives actions and any other useful initiative to this end.

27. Article 26 of Legislative Decree No.198/2006 was amended in 2017, by Article 1, para.218, let. b) of Act No.205/2017, by which harassment and sexual harassment fall within the discrimination scope: by doing so, any worker concerned can report it / file a complaint before the local Equality Councillor. Furthermore, Articles 36, 37 enable Equality Councillors to take legal action or intervene in out-of-court settlement-related proceedings, in the event of a discrimination case directly reported to them by the worker victim of discrimination at workplace. Moreover, Equality Councillors work together with labour inspectors at all levels of local administration. This activity is regulated by a specific MoU.

28. Equality Councillors act on behalf of the workers, directly at workplace, as they are established at all administrative levels, regionally, provincially and nationally.

29. With regard to para.94 of the Report (page 14) - distrust by workers during inspection and para. A IV and V bullet points of the Recommendations (page 17) - use of cultural mediators - mention has to be made of the following:

30. We share the observation of the Special Rapporteur on the important role that cultural mediators might play in order to support the inspectors in gaining the trust of migrant workers. Indeed, we believe they could be very helpful not only to overcome linguistic barriers but also to establish a relationship of trust between workers and supervisory authorities.

31. In this respect, we would like to mention two projects that NLI (National Labour Inspectorate) is currently setting up with the aim of fighting labour exploitation and illegal recruitment (caporalato) of migrant workers. Against this background, extraordinary task forces have been planned in targeted geographical areas and economic sectors given their high risk.

32. In particular, the planned task forces will involve cultural mediators assisting labour inspectors in order to ensure the effectiveness of the inspections, thanks to their language and mediation skills. To this end, mutual training pathways for inspectors and mediators are also planned to enhance their capacity to jointly make foreign workers aware of the importance of their collaboration during the inspection (and with the judiciary) in order to have their rights adequately protected (including the right to obtain the special residence permit referred to in Article 22, paragraph quarter, of Legislative Decree No. 286/1998 - so far under-utilized) and their exploiters effectively prosecuted.

33. With regard to Para.95 of the Report, it is to be borne in mind that Sen. Mr. M. Salvini is Minister of Interior and Deputy Prime Minister of the Government of Italy.

34. With regard to para.97 of the Report (pages 14, 15) and para.A - III, IV and last bullet points of the Recommendations (pages 17, 19) - implementation of resources available to inspectors and fight against corruption -, mention has to be made of the following.

35. With regard to the Recommendation to 'increase labour inspections in the agricultural sector', we would like to underline that in 2018 the NLI significantly improved the results in its actions against illegal recruitment in agriculture (56 arrests; 243 criminal reports without arrest; over 5.000 irregular workers found at work, out of which 3.350 were totally undeclared) and that this good trend has been further improved in the first 5 months of 2019 (39 arrests; 139 criminal reports without arrest; 1.200 undeclared workers out of 2.400 irregular ones), before the summer period when Caporalato usually reaches its annual peak.

36. With regard to the remark by which, 'inspectors have limited incentives to inspect farms (and) have to use their own vehicle', it should be highlighted that a significant increase of the economic resources dedicated to a number of incentives for inspection activities has been ensured by the INL in the last few years.

37. Besides, within the above-mentioned projects, the renting of vehicles for inspection staff has been envisaged in order to meet the inspectors' requests not to use their own vehicles,

especially in the agricultural sector. In addition, it should also be underlined the relevance of the assistance from the Carabinieri of the Command for the Protection of Labour and the Carabinieri Unit at the Territorial Offices, aimed at the protection of the safety and personal security of the inspection staff, especially in case of high-risk actions.

38. On the contrary, we have to disagree with the remark stating that 'inspectors often prefer to avoid inspecting farms where the risk of exploitation is highest (and that) As a result, compliant farms are often disproportionately inspected'. Indeed, labour inspectors cannot autonomously set their targets but rather they have to follow a work-plan established by the heads of their Offices according to the annual program set at central level and based on a careful intelligence activity carried out on the basis of complaints lodged by workers directly affected by labour exploitation, as well as of information acquired from social partners, other supervisory bodies, government authorities, etc..

39. Moreover, with regard to the phenomenon of collusion highlighted in the report, we would like to point out that those detected are very isolated cases in the context of the inspection activity and nevertheless they are carefully followed and counteracted by the NLI.

40. Indeed, since its establishment, the NLI adopted and implemented the Three-Year Corruption and Transparency Prevention Plan, providing specific measures to prevent the risk of corruption, such as specific training courses for inspection staff, rotation of the responsibility positions, monitoring of the compliance with the Code of Conduct for labour inspectors (also within the specific 'Project for the transparency and consistency of the inspection activity', which allows a number of relevant stakeholders to report to the NLI alleged violations by a single inspector of the principle of consistency of the inspection activity).

41. With regard to para.98 of the Report (page 15) and para. A - III bullet point of the Recommendations (page 17) - consistency of inspection force and role of inspectors in the field of immigration, mention has to be made of the following:

42. As for the remark, 'there are very few labour inspectors assigned to large geographic areas', it should be recalled that pursuant to Art.1, paragraph 445, of the 2019 Budget Law, during the three-year period 2019-2021, an extraordinary recruitment procedure will be implemented in order to allow the NLI to recruit about 1,000 new officials, mainly labour inspectors, thus strengthening the labour surveillance and the fight against undeclared work and labour exploitation.

43. Finally, we cannot agree with the statement that 'the legislative framework introduced in 2009 encourages labour inspectors to prioritise the detection of irregular migrant workers over monitoring working condition'; indeed, while confirming that labour inspectors are required by the law to formally identify the Non-EU workers without a valid residence permit that they might find at workplace, we want to clarify and point out that the institutional task of the inspection staff consists in the effective protection of the working conditions of workers, including illegal immigrants. Therefore, labour inspectors are primarily committed to ensuring the employers' compliance with the legal and contractual provisions, such as those ones about wages, social security, working hours, health-care and safety at workplace, and the entire national and international labour related legislation enforced domestically.

44. By recalling Article 32 of the Italian Constitution<sup>5</sup>, mention has to be made of the following.

#### **Relevant legal framework**

45. In general terms, article 34 of 1998 Italian Immigration Act (TUI) states that registration with the National Health Service, and consequently treatment, rights and duties in condition of full equality with Italian citizens as regards the contribution obligation, is guaranteed to the following foreigners:

<sup>5</sup> "Art. 32. *The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent. No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person*".

(a) Foreigners legally resident who have regular ongoing employment or self-employment or are registered in the employment lists;

(b) Foreigners legally resident or who have requested the renewal of the residence permit, for subordinate work, for self-employment, for family reasons, for political asylum, for asylum request, for awaiting adoption, for custody, for acquisition of citizenship.

46. Healthcare is also extended to legally resident dependent family members.

47. Moreover, DPCM (Decree of President Council of Ministers), dated January 12, 2017, establishes that foreigner minors are provided with the same treatment as Italian minors.

48. According to 1998 Italian Immigration Act Article 35, foreigners legally residing, who are not comprised in the above mentioned categories, are required to insure themselves against the risk of illness, accident and maternity. This insurance can be realized by signing a special policy with an Italian or foreign insurance institution, valid in the national territory, or through voluntary registration with the National Health-Care Service by means of an annual contribution – the latter is also valid for dependent family members.

49. Furthermore it should be stressed that by law foreign nationals present on the national territory, who do not comply with the rules concerning entry and stay, are always provided with urgent or in any case essential outpatient and hospital care in public and accredited institutions, even if in need of continuous care, due to illness and accident. Also preventive medicine programs are extended to guarantee individual and collective health-care. In particular, Italian State guarantees:

(a) The social protection of pregnancy and maternity, with equal treatment with Italian citizens;

(b) The protection of the child's health-care in accordance with UN Convention on the rights of the child;

(c) Vaccinations in accordance with the regulations and within the framework of collective prevention campaigns authorized by the regions;

(d) Interventions of international prophylaxis;

(e) Prophylaxis, diagnosis and treatment of infectious diseases.

The above services shall be provided free of charge to the applicants if they do not have sufficient financial resources.

### **Institutional framework**

50. Following Constitutional Law dated 18 October 2001 (which reformed Title V of the Constitution), Regions are responsible for the organization and administration of health-care within their respective territories. This constitutional reform has made the work of the Regions much more complex also regarding healthcare of migrant population. It is no longer simply a matter of implementing state health-care policies because Regions are now responsible for establishing priorities, developing strategies, formulating policies, and designing operational tools for the implementation and monitoring of these policies.

#### *Article 68*

51. Regarding their status, migrants, who are legally resident in Italy, are registered in National Health-Care Service. Consequently, treatment, rights and duties are provided in condition of full equality with Italian citizens in every region.

52. Migrants illegally present in the national territory have access to healthcare for urgent care or in any case essential outpatient and hospital care in public and accredited institutions, even if in need of continuous care, due to illness and accident, through the so-called STP (Temporarily Present Foreigner) code.

53. The STP code is issued by the local health-care authorities at the time of the requesting treatment or at the request of the party concerned.



54. Also preventive medicine programs are extended to guarantee individual and collective health-care. In particular, Italian State guarantees:

- (a) The social protection of pregnancy and maternity, with equal treatment with Italian citizens;
- (b) The protection of the child's health in accordance with UN CRC Convention;
- (c) Vaccinations in accordance with the regulations and within the framework of collective prevention campaigns authorized by the regions;
- (d) Interventions of international prophylaxis;
- (e) Prophylaxis, diagnosis and treatment of infectious diseases.

*Article 69*

55. Following Constitutional Law, dated 18 October 2001 (which reformed Title V of the Constitution), Regions are responsible for the organization and administration of health-care within their respective territories. Regions, by always respecting the national legislation, are responsible for establishing priorities, developing strategies, formulating policies, and designing operational tools for the implementation and monitoring of relevant policies.

56. With regard to Recommendations contained in page 18, mention has to be made of the following:

With regard to bullet No.1, this is already taking place in Italy;

With regard to bullet No.6, there is an imprecision, “the national health card” enables and gives access to the national health care as a whole, and therefore without any regional differences.

57. Finally, with regard to Recommendations concerning linkages between labour exploitation and migration (page 18): “Continue to grant humanitarian visa or residence permits to migrants with particular vulnerabilities who are not recognised as refugees”, it is to be reiterated as follows:

- Law Decree No.113/ 2018, converted with modifications by Act No. 132/2018, guarantees the protection of individuals under particular vulnerability (Articles 18, 18-bis, 20-bis, 22, 12-quater of TUI), namely the victims of violence or severe exploitation, human trafficking, domestic violence and for compelling health reasons. The residence permit for "special cases" issued to the aforementioned categories of particularly vulnerable subjects allows the execution of work activities and can be converted under given requirements into a residence permit for labour purposes.

## **Conclusion**

Italian Authorities take this opportunity to express their gratitude to the UN Special Rapporteur, Ms. U. Bhoola, for her 2018 mission to Italy and the constructive dialogue thereof.