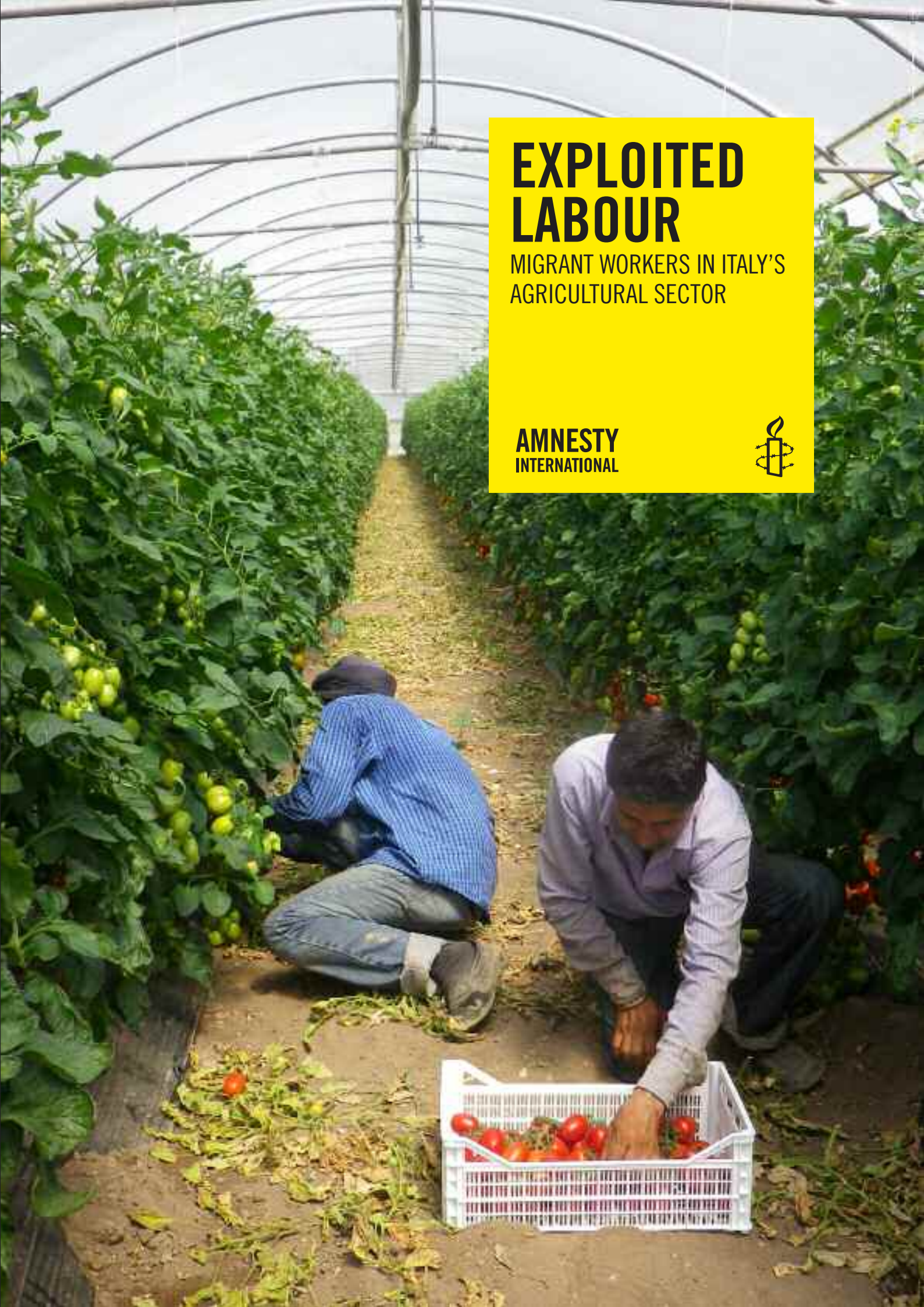


# EXPLOITED LABOUR

MIGRANT WORKERS IN ITALY'S  
AGRICULTURAL SECTOR

AMNESTY  
INTERNATIONAL



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**AMNESTY  
INTERNATIONAL**



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*Cover photo:* Migrant workers harvesting tomatoes in Italy, June 2012. © Amnesty International

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# GLOSSARY

**“Labour exploitation”:** in this paper, the notion of labour exploitation refers to labour conditions that are in violation of international law and standards. This is a broad notion, which encompasses phenomena of different gravity. This diversity is generally described by reference to a “labour exploitation spectrum”, a continuum of situations the gravity of which depends on working conditions, the worker’s personal circumstances and other factors. At one end of the spectrum, situations of no or little labour exploitation include freely chosen and regular work. Along the spectrum, irregular labour and exploitative labour would be followed by forced labour and slavery.<sup>1</sup>

**“Migrant”:** a person who moves from one country to another to live and usually to work, either temporarily or permanently. Migrants may move to take up employment, or to be reunited with family members. Many move for a combination of reasons.

**“Migrant worker”:** according to the Migrant Workers’ Convention, “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Article 2.1).

**“Regular migrants”:** foreign nationals whose migration status complies with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under Italian law, are entitled to stay in the country. It is used as short for “migrants in a regular migration status” and as a synonym for “documented migrants”.

**“Irregular migrants”:** foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under Italian law, are not be entitled to stay in the country. It is used as short for “migrants in an irregular migration status” and as a synonym for “undocumented migrants”. The term “irregular” refers only to a person’s entry or stay and does not express a quality of the individual.

**“Refugees”:** foreign nationals who enter a country, whether regularly or irregularly, in order to escape persecution in their country of origin, as defined in the 1951 Convention Relating to the Status of Refugees.

**“Asylum seekers”:** individuals who say they are a refugee, but whose claim has not yet been definitively evaluated.

**“Undeclared workers”:** workers whose employment relationship employers fail to declare to the authorities to avoid paying taxes and social security; i.e., workers employed irregularly, without an official contract of employment.

**“Trafficking of migrants”:** according to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions against Transnational Organised Crime, “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of

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deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”



# INTRODUCTION

**“We were working from 6 in the morning to 6 in the evening, every day of the week, for 20 euros a day. We could not take breaks, not even for eating. We used to eat the oranges on the trees.”**

“Kojo”, a migrant worker from Togo<sup>2</sup>

During the past decade, the public debate in Italy on migration from Africa, Asia, Eastern Europe and the Middle East has been characterised by stigmatization of immigrants by the media and politicians, and shaped by increasing xenophobic sentiments among the general public.<sup>3</sup> Against this background, the Italian government has linked immigration control with public security, reinforcing the public perception that the country's security is threatened by an uncontrollable wave of dangerous “clandestine” migration.<sup>4</sup>

At the same time, the exploitation of foreign national migrant workers employed in the agricultural sector has begun to catch the attention of the Italian public. In January 2010, clashes between migrant workers and the local population in the small agricultural town of Rosarno, Calabria, received wide media coverage, suddenly bringing the issue of the living and working conditions of agricultural migrant workers to the fore.

This report focuses on foreign national migrant workers from sub-Saharan Africa, north Africa and Asia, employed in low-skilled, often seasonal or temporary jobs, mostly in the agricultural sector. Amnesty International's research found evidence of instances of widespread and/or severe labour exploitation, in violation of Italy's obligations under several international conventions on labour rights,<sup>5</sup> in particular wages below the minimum wage agreed between unions and employers' organisations, arbitrary wage/salary reductions, delays or non-payment of wages and long working hours.

The findings demonstrate a pattern of labour exploitation of migrant workers in the agricultural sector in the areas of Latina and Caserta. Further, the research findings disclose a causal link between labour exploitation of migrant workers and the measures adopted by the Italian government with the stated view of controlling and regulating migration flows. This link, combined with the findings of other studies that reveal similar patterns of labour exploitation in other sectors and in various other parts of Italy, indicate that the labour exploitation of migrant workers is widespread across Italy.

In this report, Amnesty International expresses concern that:

- Migrant workers, especially those working in low-skilled jobs, such as those who find temporary or seasonal employment in the agricultural sector, are often victims of severe labour exploitation, in particular wages below the minimum wage agreed between unions and employers' organisations, arbitrary wage/salary reductions, delays or non-payment of wages and long working hours (see Part One);
- Italian migration policy as currently formulated increases the risk faced by foreign national migrant workers, especially those in an irregular situation, of being subjected to labour exploitation (see Part Two); and
- Italy's legislative framework, and the way in which it has been implemented, create obstacles to access to justice for migrant workers who are victims of severe forms of labour exploitation, such as those mentioned above, and offer them inadequate protection (see Part Three).

## THE MIGRANT WORKFORCE

At the beginning of 2011, foreign nationals in Italy were estimated to be 5.4 million, i.e. about 8.9 per cent of the population.<sup>6</sup> Of these, 4.9 million have a regular migration status (i.e. hold a valid residence permit or other valid document allowing them to stay in the country), including 1.3 million EU citizens.<sup>7</sup> The foreign nationals in an irregular migration status are estimated to be between 440,000 and 540,000.<sup>8</sup> However, the actual migration status of migrant workers in the country is often more complex in reality than it appears to be on paper.

### MIGRATION STATUS: MORE COMPLEX THAN IT APPEARS

The distinction between regular and irregular migrants is often not as simple as it may appear at first instance.

The category of "irregular migrants" is, in fact, very heterogeneous. It includes: individuals who arrived in Italy "irregularly", often referred to in Italian with the derogatory term *clandestini*, "clandestine" migrants; those who arrived in Italy regularly but then became irregular by, for example, overstaying their visa; and rejected asylum-seekers and others who have sought international protection and whose claims have been dismissed.<sup>9</sup> "Irregular migrants" may or may not have been issued with one or more expulsion orders from Italian territory. Some of them may have spent time in administrative detention, having then been released without further action because Italian authorities have found it impossible to enforce the expulsion order.<sup>10</sup>

The category of "regular migrants" is equally heterogeneous, as it generally includes European Union nationals, as well as non-EU nationals who are granted residence permits for reasons other than work (including family reunification, study, health reasons, etc.). Non-nationals with a regular migration status also include refugees.

Regular migrants are typically employed as domestic workers or carers for children, disabled or elderly people (14.8 per cent); construction workers (12.1 per cent); providing services for businesses (11.3 per cent); in hotels and restaurants (10.3



per cent); and in agriculture (8.8 per cent).<sup>11</sup> The latter sector, in particular, is heavily reliant on the foreign national migrant workforce. According to official data, in 2010 regular migrants carried out 23.6 per cent of the total working days in the agricultural sector.<sup>12</sup> Official statistics, however, do not capture the work of irregular migrants and the work of “undeclared” migrant workers (regular migrants whose employment relationship employers fail to declare to the authorities to avoid paying taxes and social security).

Under Italian law it is a criminal offence to employ an irregular migrant - whose employment would thus always be irregular. Regular migrants, on the other hand, may or may not hold a residence permit allowing them to work regularly in Italy: for example, holders of residence permits for “justice reasons” (*permessi di soggiorno per motivi di giustizia*) are not allowed to work.<sup>13</sup> However, even regular migrants with a residence permit which would entitle them to access the job market lawfully are often denied an official contract by their employers, who also fail to register them with the authorities to avoid paying taxes and social security. As a result, many regular migrants end up being employed irregularly, as many Italian nationals are.

## THE OBLIGATION TO RESPECT, PROTECT AND FULFIL THE LABOUR RIGHTS OF ALL WORKERS

Under Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States Parties are under a duty to respect, protect and fulfil “the right of everyone to the enjoyment of just and favourable conditions of work”. These would ensure, for example: fair wages and equal remuneration for work of equal value; remuneration which provides all workers, as a minimum, with a decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours.

The UN Committee on Economic, Social and Cultural Rights has highlighted that the right to work safeguards should extend to everybody, including all migrant workers, in line with the principle of non-discrimination.<sup>14</sup> The UN Committee on Economic, Social and Cultural Rights also recommended: “States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers, in particular those provided for in articles 6, 7 and 8 of the Covenant. These measures must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice.”<sup>15</sup>

The UN Committee on the Elimination of Racial Discrimination recommended states to “Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.”<sup>16</sup> In the words of the Inter-American Court of Human Rights: “The State is obliged to respect and ensure the labour human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that prejudice the latter in the employment relationships established between individuals (employer-worker). The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.”<sup>17</sup>

## EQUALITY AND NON-DISCRIMINATION BASED ON MIGRATION STATUS

The principle of equality and non-discrimination prohibits both discrimination between Italian nationals and migrant workers; and discrimination against irregular migrant workers. The UN Committee on Economic, Social and Cultural Rights has highlighted that the right to work safeguards should extend to everybody, including all migrant workers, in line with the principle of non-discrimination.<sup>18</sup> Indeed,

“The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>19</sup>

The Committee further noted:

“States parties are under the obligation to respect the right to work by, inter alia, prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees, members of minorities and migrant workers”.<sup>20</sup>

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“Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.”<sup>21</sup>

The Inter-American Court of Human Rights, a body responsible for the application and interpretation of the American Convention on Human Rights, gave a legal opinion on the status and rights of irregular migrants in 2003. The opinion is based on the principle of equality and non-discrimination, which is a norm of general international law;<sup>22</sup> the Court's findings, therefore, are applicable to all states. The Court considered that “the general obligation to respect and ensure human rights binds States, regardless of any circumstance or consideration, including a person's migratory status”<sup>23</sup> and concluded that states have the obligation to respect and guarantee the labour human rights of all workers, including those of irregular migrant workers:

“A person who enters a State and assumes an employment relationship, acquires his labour human rights in the State of employment, irrespective of his migratory status, because respect and guarantee of the enjoyment and exercise of those rights must be made without any discrimination. In this way, the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment. On assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his regular or irregular status in the State of employment. These rights are a consequence of the employment relationship.”<sup>24</sup>

## METHODOLOGY

The research findings set out in this report result from, among other things, two research visits to Italy, in February 2012 (Milan, Rome and Rosarno) and June-July 2012 (Rome, Latina area and Caserta area), during which Amnesty International delegates conducted meetings and interviews with migrant workers, NGOs and other civil society organisations, international organisations, trade unions and academic experts, as well as representatives of the *Direzione Nazionale Antimafia* (Office of the National Anti-Mafia Prosecutor) and of the *Questura* (Area Police Office) in Latina and Caserta.

In particular, in June and July 2012 Amnesty International conducted research in the Latina area, in the Lazio region, and the Caserta area, in the Campania region, interviewing non-EU national migrant workers, mainly employed in the agricultural sector. The organization spoke to workers in both a regular and irregular situation. The Latina area was chosen because of the presence of a large community of Indian (mostly Punjabi) agricultural workers and the preponderance of the agricultural sector in the area. The Caserta area was chosen because of the presence of a large community of North African and sub-Saharan African migrant workers, many of whom find seasonal employment in and around Southern Italy picking and harvesting agricultural produce. In Caserta, Amnesty International was able to interview several migrant workers who were in Rosarno (Calabria region) at the time of the violent clashes in January 2010 (see below). The organisation had also previously visited Rosarno in February 2012.

## ACKNOWLEDGEMENTS

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# PART ONE: ITALY'S MIGRATION POLICY INCREASES THE RISK OF LABOUR EXPLOITATION

Amnesty International acknowledges the prerogative of states to control the entry and stay of non-nationals into their territory, subject to their obligations under international law. As such, states' discretion in the adoption and enforcement of migration policies is limited by their obligation to respect, protect and fulfil the human rights of all individuals within their territory and subject to their jurisdiction.<sup>25</sup> In the words of the Global Migration Group, a group of 14 UN and other agencies:

“Too often, States have addressed irregular migration solely through the lens of sovereignty, border security or law enforcement, sometimes driven by hostile domestic constituencies. Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns cannot, and indeed, as a matter of international law do not, trump the obligations of the State to respect the internationally guaranteed rights of all persons, to protect those rights against abuses, and to fulfil the rights necessary for them to enjoy a life of dignity and security.”<sup>26</sup>

## THE “FLOWS DECREE” SYSTEM

Italy's current migration policies are shaped by the 1998 Consolidated Act on Immigration (*Testo Unico sull'Immigrazione*),<sup>27</sup> as amended by the 2002 “Bossi-Fini Law”.<sup>28</sup> These laws are informed by three key principles.

The first of these is the regulation of entry flows. The number of migrant workers admitted to the country every year is capped and determined in a governmental decree (the “flows decree”, *decreto flussi*), which sets maximum quotas for different types of workers – “contractual”, “seasonal” and “self-employed” - by nationality, with the declared aim of both responding to the demand for foreign labour in the national economy while also limiting the number of immigrants.<sup>29</sup>

The second principle is to ensure that the issuing of a residence permit is dependent on the existence of a written contract of employment, as guaranteed by the employer. Accordingly, non-EU migrant workers who want to work in Italy can enter the country only if they manage to secure, prior to arrival, a “residence contract” (*contratto di soggiorno*) with an employer based in Italy.

The employer must apply to the immigration authorities for authorisation to hire a non-EU migrant worker, submitting a proposal for a “residence contract” in which he/she undertakes to guarantee suitable accommodation and pay the costs of the return journey.<sup>30</sup> Once it is verified that no Italian or other EU-national worker is interested in the job, the Italian authorities issue the authorisation (*nulla osta al lavoro*), subject to the relevant quota requirements as laid down by the “flows decree”.<sup>31</sup> On the basis of this

authorisation, the relevant Italian consular authorities in the migrant worker's country of origin issue him/her with an entry visa. Once in Italy, the migrant worker must sign the residence contract before the immigration authorities and apply for a residence permit.<sup>32</sup> Residence permits for contracted workers are valid for up to two years.

The procedure for obtaining seasonal employment is similar to the procedure for obtaining contractual employment. It is for the employer to apply for a work authorisation, which the authorities can only provide within the limit of quotas set by the government. Once the employer has received the authorisation, the worker can apply for an entry visa, which, once obtained, needs to be converted into a residence permit within eight days of arrival in Italy. Residence permits for seasonal workers are valid for up to nine months.<sup>33</sup>

The third principle of the Italian migration policy is the expulsion of irregular migrants. Expulsion, and, since 2009, criminalisation (see below), is the only available institutional response to irregular entry and stay.<sup>34</sup> As a result, a system of administrative detention was put in place with the purported aim of ensuring the implementation of expulsion orders. While the Italian migration detention system does not form the subject matter of this report, Amnesty International has in the past expressed concern about it on several occasions.<sup>35</sup>

## INEFFECTIVE AND OPEN TO ABUSE

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has pointed out that

the discourse of the [Italian] authorities supporting a model of legal migration within quotas established on the basis of the needs of the labour market is challenged by the reality of an important number of migrants working in the illegal sector. Fundamental questions need to be raised in this context. Are the quotas wrongly established, or are the needs of the labour market incorrectly assessed? Are the lengthy and costly procedures an excessive burden for employers, who resort to hiring migrants illegally? Are the repressive norms in place pushing migrants into illegality?"<sup>36</sup>

In addition, the Italian quota system suffers from several significant practical shortcomings.

- The entry quotas established by the Italian government remain consistently below the real market demand for migrant labour.<sup>37</sup>
- The process that would allow an employer to recruit a foreign worker is long and bureaucratic. It can take more than nine months to receive an authorisation (*nulla osta*) to work in the country after the application has been submitted.<sup>38</sup> Consequently, the assumption that employers in Italy would recruit migrant workers while they are still in their country of origin – when they can hire migrants who are already in Italy, even though they are in an irregular situation – has been criticised as unrealistic.<sup>39</sup> This is especially true for low-skilled jobs, such as those typically done by seasonal workers employed in agriculture or tourism.
- Migrant workers cannot apply for a residency visa without the cooperation of

their employer.

- Even when the employer is willing to conclude a “residence contract” with an irregular migrant, residence permits for contracted or seasonal work cannot legally be issued to migrant workers who are already in Italy irregularly.<sup>40</sup> Irregular migrant workers, therefore, have no choice but to work in the informal economy, as undeclared workers.

As a result, the Italian “flows decree” system is both ineffective and open to abuses, as illustrated in the next section.

#### THE SEASONAL PERMITS SYSTEM: FAILING MIGRANTS, PUSHING THEM INTO IRREGULARITY AND LAYING THEM OPEN TO ABUSE

The ineffectiveness of the seasonal permits system in several areas of Southern Italy was analysed in a comprehensive study published in December 2010 by the International Organization for Migration (IOM). The IOM noted that, in the areas considered, the number of authorisations (*nulla osta*) for seasonal work which led to the issuing of seasonal residence permits ranged only from 6.8 per cent to 28.7 per cent.<sup>41</sup> In other words, the majority of non-EU migrants, arriving in Southern Italy regularly on the basis of a promise of seasonal employment guaranteed by an employer based in Italy, were not able to sign their residence contract and obtain a residence permit after their arrival, with all the consequences that an irregular immigration status entails.

According to IOM, this data highlights two phenomena. Firstly, IOM argues that the seasonal permits system is open to abuse.<sup>42</sup> In fact, many of the “employers” who apply for a seasonal employment authorisations do not genuinely intend to employ a migrant worker; rather, they are part of an organisation who sells migrants the documents needed to enter Italy regularly.<sup>43</sup> Several migrants interviewed by IOM reported having paid up to 10,000 euros to smuggling organisations in Egypt, Morocco, India and Pakistan to buy an authorisation (*nulla osta*) allowing them to enter Italy.<sup>44</sup> Some of the migrants interviewed by Amnesty International gave similar testimonies (see below). Once the migrants have arrived regularly in Italy, however, the “employers” are not available to complete the process that is supposed to lead to the issuance of a residence permit. A few days after their arrival, therefore, having failed to sign the residence contract and apply for the residence permit, the individuals concerned become irregular.

Secondly, IOM maintains that the seasonal permits system is ineffective, as agricultural employers prefer employing migrants already in Italy. This is because the procedures of the seasonal permits system are long and bureaucratic; and a large workforce of migrant workers is already available in Italy.<sup>45</sup> These factors, together with the prevalence of the informal economy in the agricultural sector and the problematic phenomenon of *caporalato* (illegal gang-mastering, see below) would explain why the sectors traditionally reserved to seasonal workers (agriculture and tourism) actually employ migrants with migration profiles other than that of seasonal migrant workers.

#### THE REALITY OF THE SEASONAL PERMITS SYSTEM IN THE LATINA AREA

The research conducted by Amnesty International in the Indian migrant workers community of the Latina area during June-July 2012 (see below) further confirms the findings of the IOM's research on the seasonal residence permits system. Many Indian migrant workers who arrived in Italy several years ago entered the country irregularly, after long journeys through Russia and Eastern Europe.<sup>46</sup> More recently, however, a visas sale system seems to have been established, taking advantage of flaws in the seasonal permits process.

A *nulla osta* (authorisation necessary to obtain an entry visa) can be obtained through friends already in Italy, or bought through more complex smuggling organisations with “agencies” and “intermediaries” both in India and in Italy.<sup>47</sup> Residence contracts can also be bought, as well as promises of employment. “Sunny” (not his real name), an Indian migrant worker, told Amnesty International:

“In India I paid 300,000 Rupees (about 4,300 euros) for a *nulla osta* to enter Italy. To have a contract once you arrive in Italy you need to pay 1,000 euros more. I did not know the regulations in Italy, so I paid only for entry.”<sup>48</sup>

The “employers” receive money to apply for the authorisation, but in most cases do not intend to employ regularly newly-arrived migrants whom they do not know. As a consequence, often either residence contracts are not signed and, eight days after arrival in Italy, the worker falls into irregularity; or residence contracts are signed so that authorities issue a seasonal residence permit, but no employment is provided.

In some cases migrant workers are deceived with respect to the nature of the papers, the availability of a job and/or their pay. For example, two Indian migrant workers among those with whom Amnesty International delegates spoke said that they had paid 1 million rupees (about 14,300 euros) each to an agent in India for a long-term residence permit and a job; they received a visa and a seasonal residence permit, but no employment.<sup>49</sup> Another Indian migrant, “Sonu” (not his real name) paid 450,000 rupees (about 6,500 euros) for a residence permit and a well-paid job; he received an authorisation (*nulla osta*) but no residence contract.<sup>50</sup>

#### ABSENCE OF EFFECTIVE REGULAR MIGRATION CHANNELS

The entry quotas established by the Italian government remain consistently below the real market demand for migrant labour, ending up creating the background against which abuse and exploitation thrive. In 2011 employers submitted about 400,000 applications for contractual employment of migrant workers, nearly four times the number of available places under the quota set for that year (i.e. 98,080).<sup>51</sup> The authorisations, assigned on a first-come, first-served basis following an online application by the employer, are generally all allocated within a few minutes on the morning of the first available day (known in Italian as “click day”).<sup>52</sup> A gap of similar magnitude between applications submitted by the employers and quotas decided by the government exists with respect to seasonal employment.<sup>53</sup>

Civil society organisations working with migrant workers have pointed out that, because of the shortcomings of Italy's “flows decree” system, the migrant workers



who arrive in Italy after having been hired by an employer while they are abroad are a minority.<sup>54</sup> Entering the country irregularly and/or experiencing a period of irregular stay is a common stage of the migration phenomenon in Italy. The majority of non-EU national migrant workers arrive in Italy on a visa other than the one for contracted employment, or irregularly.<sup>55</sup>

Under the current Italian migration policy, with the exception of the *ad hoc* regularisation programs (see below), there is no legal way for migrant workers who are already in Italy irregularly to obtain a residence permit for contracted or seasonal work. Migrant workers cannot apply for a residency visa without the cooperation of their employer. However, even when the employer is willing to conclude a “residence contract” with an irregular migrant, residence permits for contracted or seasonal work cannot legally be issued to migrant workers who are already in Italy irregularly.<sup>56</sup> Irregular migrant workers, therefore, have no choice but to work in the informal economy, as undeclared workers.

Because regular migration channels are insufficient and permanent regularisation mechanisms are unavailable, the “flows decree” system has *de facto* become a periodic, unofficial regularisation mechanism. Employers apply to obtain a *nulla osta* and a visa for migrant employees who are already in Italy, including in many cases in exchange for money.<sup>57</sup> If and when the employer receives the *nulla osta*, the migrants go back to their country of origin to collect their entry visa and re-enter Italy, this time regularly. “Shabi”, a Punjabi migrant worker, told Amnesty International:

“The first time that my employer applied for my *nulla osta* [authorisation] for seasonal work I had been working for him for four months. I had to pay 200 euros to an accountant. The *nulla osta* arrived in July 2008. A few days later I went back to India to collect my visa and came back the following November. The residence permit expired after nine months. In May 2009 the employer applied a second time; I had to pay 150 euros. The *nulla osta* did not arrive until October 2010. After a week I went back to India again to pick up my visa.”<sup>58</sup>

In this process, irregular migrant workers are completely dependent on their employer's willingness to apply for the documents necessary to regularise their status, as the procedure to obtain a *nulla osta* can only be initiated by the employer. This exposes them to an increased risk of labour exploitation.

## **IRREGULAR MIGRATION STATUS INCREASES THE RISK OF LABOUR EXPLOITATION**

Irregular migration status increases the risk of labour exploitation. This is because:

Firstly, irregular migration status limits the workers' power to negotiate adequate pay and/or standards of employment and makes it more difficult for them to change employer. The link between irregular migration status and limited power to negotiate working conditions has been documented with respect to agricultural migrant workers in Southern Italy.<sup>59</sup> The migrants interviewed by Amnesty International identified a stronger bargaining power and the ability to look for another job without fear of being deported as the main advantages of having regular papers.<sup>60</sup> “Hari” (not his real name) told Amnesty international: “Although the wage I get is

the same as when I did not have papers, papers do help a lot. Those without papers are made to work much harder and find it more difficult to get other jobs. With papers, I have the confidence to quit my job and take a new one, if I need to.”<sup>61</sup>

Secondly, only irregular migrants are liable to be subjected to some coercive tactics such as employers' threats of denunciation to the authorities. In certain circumstances, such tactics may result in forced labour. In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts), in considering the issue of exploitation of foreign workers in an irregular situation in Italy, concluded: “[P]oor conditions of work do not always amount to a forced labour situation. However, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of any penalty (such as dismissal, deduction of wages and threats of denunciation to authorities), such exploitation ceases to be merely a matter of poor conditions of employment and calls for the protection of the [Forced Labour] Convention. In this connection, the Committee draws the [Italian] Government's attention to the fact that migrant workers who are illegally resident are in a highly vulnerable situation and therefore even more prone to become exploited in forced labour.”<sup>62</sup>

## A WORK MIGRATION SYSTEM THAT ENCOURAGES LABOUR EXPLOITATION

Amnesty International considers that the measures adopted in Italy with the stated view of controlling and regulating migration flows, in particular the way in which the “decree flows” system operates in practice, increase the already heightened risk for irregular migrant workers of being subjected to labour exploitation.

Several experts have criticised the “Bossi-Fini Law”, which requires a formal employment contract to obtain a residence permit, for exposing migrant workers, who are already at risk of labour exploitation because of their migration status, to an increased risk.<sup>63</sup> This is because the need to have a formal labour contract in order to obtain or renew a residence permit makes migrant workers dependent on the willingness and cooperation of their employer. The employer's effective power to determine the worker's migration status can easily become a tool to intimidate or threaten workers, undermining their ability to negotiate better wages and working conditions.

Often, the promise of regular documents is used by employers to induce migrant workers to accept exploitative labour conditions. “**Hari**” (not his real name), an Indian migrant worker, told Amnesty International:

“For the first four years after coming to Italy I worked in a factory that packed onions and potatoes for export. I was paid 800 euros a month for 12-14 hours of work a day. It was really tough work. The employer used to tell me that if I worked hard and well, they would get papers for me – they never actually did so.”<sup>64</sup>

The non-payment of wages or arbitrary wage deductions are also common instances, with the employer using their “cooperation” in the process to obtain a residence permit for the workers as a leverage. “**Mithu**” (not his real name), an Indian migrant worker, told Amnesty International:

“In 2009, when my employer received a *nulla osta* for me, I had been working in his farm for more than two years and was paid 3.70 euros per hour. A couple of months later I went to India to pick up my visa. When I arrived back in Italy my employer said that he did not want to employ me further and refused to give

me the contract that I needed to obtain my seasonal residence permit. At that point, the employer owed me more than 6,500 euros in unpaid wages. When I asked for my money, the employer told me that he had deducted 3,000 euros for the *nulla osta*.”<sup>65</sup>

The testimonies collected by Amnesty International are not isolated cases. In a 2009 survey of 291 victims of serious labour exploitation, 47 per cent of the workers interviewed indicated that their exploitative working relationship was characterised by false promises on the part of the employer to conclude residence contracts and/or other documents necessary to regularise the worker's status.<sup>66</sup> In other words, the workers could not regularise their migration status because of the lack of cooperation on the part of the employer, which kept the worker in a situation of risk, resulting in labour exploitation.

## REGULARISATION PROCESSES: TOO MUCH POWER IN THE HANDS OF THE EMPLOYER

Since the adoption of the Consolidated Act on Immigration in 1998, the Italian government has resorted to four *ad hoc* regularisation measures, in 1998, 2002, 2009 and 2012. Observers have noted that the regularisation measures of irregular migrants in Italy are made necessary by structural failures in the country's migration policy.<sup>67</sup>

Regularizing the status of irregular migrants can be an effective way of reducing the risk of labour exploitation and increasing the protection of their rights. However, regularisation mechanisms can become fertile ground for further exploitation if their procedures and criteria do not protect the rights of migrants.

Rather than addressing the failures of Italy's migration policy, the latest regularisation measures have compounded its negative effects, resulting in irregular migrants being exposed to a greater risk of labour exploitation. This is because the latest regularisation measures have involved procedures that were entirely centred on the employer, failing to take into account the rights of the worker. In considering the 2002 regularisation measure, the UN Special Rapporteur on the human rights of migrants noted that the process depended entirely on the employer's goodwill and commented:

“the fact that only the employer can request regularisation leaves illegal migrant workers all the more vulnerable.”<sup>68</sup>

The same concerns arose with respect to the 2009 and 2012 regularisations (see below).

### THE 2009 REGULARISATION FOR CARERS AND DOMESTIC WORKERS

Approved days before the entry into force of new legislative measures intended to fight irregular migration on the grounds that it posed a security threat (the “security package”),<sup>69</sup> the 2009 regularization amounted to an amnesty for those employing carers and domestic workers without a regular contract. These employers could

avoid the severe sanctions imposed by the “security package” by declaring the existence of the employment relationship to the authorities and paying a fee of 500 euros per worker. The “parties” (i.e. the employer and the migrant worker) would then be summoned before local immigration authorities to complete the procedure and apply for a residence permit.<sup>70</sup>

The procedure of the 2009 regularisation focused entirely on the employer, with no role at all for the migrant worker, who was not entitled to actively participate at any stage of the proceedings. In particular, the 2009 regularisation laid down the following restrictions in respect of the rights of migrant workers:

- **The migrant worker was not entitled to submit the application.** Only the employer, not the worker, could do so.<sup>71</sup> In other words, access to the regularisation process was entirely left to the discretion of the employer, even where the employment relationship met the criteria required in law for regularising the employee's status.
- **The migrant worker was not entitled to receive documents and communications directly from the authorities.** Any document or communication from the authorities was sent to the employer, who was required to pass it on to the migrant worker. This included providing the migrant worker with the official acknowledgment of the submission, i.e. the document which entitled them to stay in Italy until completion of the procedure and which therefore became one of their essential identity documents,<sup>72</sup> as well as information about further procedural steps and requirements.<sup>73</sup>
- **The migrant worker was not entitled to finalise the procedure without the cooperation of the employer, even when the employment relationship had been terminated in the meantime.** The 2009 regularisation provided that “the parties” should be present for the procedure to be completed before the relevant local authorities.<sup>74</sup> As to whether the procedure could be completed when only one of the two parties was present, the Ministry of Interior clarified that the employer could conclude the procedure alone (not the worker).<sup>75</sup>
- **The migrant worker was effectively prevented from leaving their employment.** In the 2009 regularisation, migrant workers who had left or lost their job after the application was made were not allowed to work on a regular basis for a different employer before completion of the procedure.<sup>76</sup> Because in some cases it took more than two years to complete the regularization procedure, due to excessive bureaucracy, workers were effectively not free to change employers during this period, regardless of the circumstances.

As a result of these employer-centred procedural requirements and the failure to consider their impact on the workers, migrant workers were both completely dependent on their employer to obtain a residence permit and effectively prevented from leaving their employment for a period of potentially up to two years, no matter what their circumstances were. This made it extremely difficult for migrant workers to report exploitation – a problem compounded by the ineffective labour inspection regime (see below).

#### THE 2012 REGULARISATION

On 16 July 2012 the Italian government adopted Legislative Decree No. 109 (the “Rosarno Law”, see below), purporting to implement European Union Directive 2009/52/CE on sanctions and measures against employers of “illegally staying third-country nationals”.<sup>77</sup> At the same time, the government launched a new regularisation measure for migrants irregularly employed (i.e. employed but whose employment was not declared to avoid tax and social security liability), including those irregularly present in Italy.<sup>78</sup>

Similar to the 2009 regularisation, the 2012 procedure was presented as an amnesty for employers who had not declared migrant employees and was adopted at the same time as new sanctions and other measures against the employment of irregular migrants. These employers had a month (from 15 September to 15 October 2012) to declare the existence of the employment relationship to the authorities and pay a fee of 1,000 euros per worker. The “parties” would then be summoned before the local immigration authorities, to complete the procedure and apply for a residence permit.<sup>79</sup>

The significant shortcomings of the 2009 regularisation, which unduly restricted the rights of migrant workers, were perpetuated by the procedures adopted for the 2012 regularisation. The 2012 regularisation legislation provided that only the employer, not the worker, was entitled to submit an application.<sup>80</sup> Although the government stated that migrant workers would receive documents and communications directly from the authorities,<sup>81</sup> the Italian authorities did not correct the other significant shortcoming of the 2009 regularisation. In particular, Italian authorities did not clarify that migrant workers would be entitled to apply and complete the procedure without cooperation from the employer; nor that migrant workers had the freedom to leave their employer and find regular work with a second employer pending the outcome of their application. As a result, migrant workers still risked being effectively “trapped” in an exploitative working relationship. Additional concerns about a complicated, expensive and unrealistic procedure were expressed by civil society organisations.<sup>82</sup>

In September 2012 Amnesty International expressed concern that ongoing limitations on the ability of migrant workers to participate effectively in the procedures to regularise their status made them completely dependent on the employer and increased the already heightened risk of labour exploitation they faced.<sup>83</sup> These concerns are particularly relevant in light of the widespread prevalence of actual labour exploitation, in many cases of a serious nature, to which migrant workers in Italy are subjected, and which Amnesty International has documented in this report (see next section).

# PART TWO: MIGRANT WORKERS' LABOUR EXPLOITATION: CASE STUDIES

Amnesty International's research found evidence of widespread labour exploitation, in particular wages considerably below the minimum agreed by unions and employers' organisations, arbitrary reductions of wages, delays or non-payment of wages and very long hours of work

## ROSARNO, CALABRIA

In January 2010 Rosarno, a small agricultural town known for the production of citrus fruits, saw the eruption of violent clashes between migrant workers and local residents. The trigger for the violence was an incident in which two migrant workers were shot at in a drive-by shooting on the night of Thursday 7 January. Following the shooting, several hundred migrants marched through the town to protest against their discriminatory treatment and poor living conditions, setting fire to cars and clashing with riot police.<sup>84</sup> The clashes were followed by a "migrant manhunt" by some local residents.<sup>85</sup> In a number of separate incidents during the following days, two migrants were reportedly beaten with iron bars, five deliberately run over by a car and a further two injured by shot-gun pellets. In total, 53 persons were hospitalised, including 21 migrants, 14 local residents and 18 police officers.

Roberto Maroni, the Minister of the Interior at the time, initially blamed the situation on "clandestine migration" and promised to expel irregular migrants.<sup>86</sup> The Italian authorities rounded up and transferred those migrant workers who had not already hastily left Rosarno to two holding centres (*centri di prima accoglienza*) in Crotona and Bari, where it became clear that more than 60 per cent of them had a valid residence permit.<sup>87</sup>

At the time of the clashes, Amnesty International expressed concern about the root causes of the events in Rosarno, i.e. the widespread exploitation of migrant workers in rural areas and the failure on the part of the authorities to take steps to address the rising xenophobia across the country.<sup>88</sup> When the clashes erupted, migrant workers in the Rosarno area were typically earning about 25 euros for a day's work of 8-10 hours and living in disused buildings and makeshift shelters without running water, electricity or heating. They were often recruited by gang-masters (*caporali*) operating illegally, who would charge up to 5 euros for transport to and from the orange groves.<sup>89</sup> In some instances, the migrants would only receive a proportion of what they were owed and would be paid late.<sup>90</sup> "Kojo" (not his real name), a migrant worker from Togo, told Amnesty International:

"In January 2010 I was in Rosarno to pick oranges. We were living in an old disused factory. A Sudanese man was the "*capo dei neri*" [the gang-master]. He

used to take us to the countryside at 5 in the morning, 20-25 people. Each of us had to give him 5 euros a day. We were working from 6 in the morning to 6 in the evening, every day of the week, for 20 euros a day [1.65 euros an hour]. We could not take breaks, not even for eating. We used to eat the oranges on the trees.”<sup>91</sup>

“**Baba**” (not his real name), a Ghanaian migrant worker, told Amnesty International:

“In Rosarno we were working from morning to night, picking oranges, for 25 euros a day; but we had to pay 5 euros for transport, so we had only 20 euros left. There were some abandoned factories where one would build a shelter with some cardboard – one was called the Ghana ghetto. That day [i.e. the day of the clashes, 7/8 January 2010] we decided to go and buy something in town. Some boys were shot by Italians. We decided to do a demonstration about that, because that was not the first time. That’s where all the problems started. There were fights between blacks and whites. But we did not want to fight the Italians; we wanted to go to the *Comune* [the local administration]. No Italian would pick oranges for 25 euros.”<sup>92</sup>

The Rosarno clashes brought to the attention of the Italian public the previously ignored plight of migrants working in the fields and farms of Southern Italy.<sup>93</sup> Following the violent clashes of January 2010, criminal investigations focused on exploitative working conditions and led to the arrest in April 2010 of 31 people on charges related to violations of labour and migration legislation.<sup>94</sup> Further, in the immediate aftermath of the clashes, the Italian government promised to strengthen the enforcement of labour standards.<sup>95</sup>

When Amnesty International visited Rosarno, in February 2012, at least a thousand migrant workers were in the area for the orange-picking season.<sup>96</sup> While the housing available to migrant workers had improved to some extent, thanks to the involvement of local authorities and pressure from civil society,<sup>97</sup> the circumstances of their employment had not improved. According to a survey conducted by ReteRadici, an Italian NGO, the majority of the 150 African migrants interviewed were working three or four days a week for 20-25 euros per day; 90 per cent of them had no contract; 24.1 per cent of them was finding work through a *caporale* (a gang-master operating illegally).<sup>98</sup>

As for the migrants who had been victims of labour exploitation while working in Rosarno at the time of the clashes, about 200 of them were granted a residence permit on humanitarian grounds (*permesso di soggiorno per motivi umanitari*) after a campaign led by civil society organisations.<sup>99</sup> Many others, however, did not receive any reparations for the exploitation suffered.

## AFTER ROSARNO

In the aftermath of the Rosarno clashes, “Kojo” was transferred to Bari, where he was served with an expulsion order as an irregular migrant and detained for six months in an immigration removal centre (CIE, Centro di Identificazione ed Espulsione, identification and expulsion centre), purportedly because his detention was necessary in order to remove him from the country. However, the Italian authorities were unable to repatriate him, reportedly because of Togo’s lack of cooperation with the removal process. As a result, in June



2010 he was released and issued with a *foglio di via*, an order to leave the Italian territory within five days. When Amnesty International met him, in July 2012, he was still working in agriculture and trying to obtain a residence permit.

When the Italian authorities evacuated “Samuel” (not his real name) – a migrant worker from Burkina Faso – from Rosarno, he was owed 425 euros of unpaid salary by his employer – a sum of money which he has not been able to recover since. After having worked in the tomato fields around Foggia, in the Apulia region of Southern Italy, in 2011, in July 2012 he was working in the agricultural sector in the Caserta area. When Amnesty International met him, he was trying to obtain a residence permit.<sup>100</sup>

## HOW MANY ‘ROSARNOS’ ARE STILL OUT THERE?

The Rosarno clashes were a watershed in the immigration debate in Italy. Before January 2010, public discourse on immigration in Italy had focused mostly on border control and public security;<sup>101</sup> after the Rosarno clashes, the issue of the living and working conditions of agricultural migrant workers gained prominence. Recent studies have shed light on several key aspects of the plight of migrant workers.

First, labour exploitation of agricultural migrant workers in Italy is not limited to Rosarno. Recent studies have documented that instances of serious labour exploitation of migrant workers are widespread in several areas of Southern Italy.<sup>102</sup> These are reportedly characterised by: “excessive control” by the employer; low pay (on average, pay which is about 40% less than the pay of an Italian worker employed in the same job); long working hours; and “abuse of the legal and social vulnerability” of the worker.<sup>103</sup> Media outlets have recently reported cases of dire living and working conditions of migrant workers also in the North of the country.<sup>104</sup> Experts have pointed out that labour exploitation of migrant workers has become a feature commonly encountered in the agricultural sector, allowing employers to reduce labour costs in response to increasing competition and a difficult economic situation.<sup>105</sup>

Second, labour exploitation of migrant workers in Italy is not limited to African migrants, but has also been documented as extending, for example, to both EU-nationals (Romanian, Bulgarian) and non-EU nationals from South-East Europe (Albanian).<sup>106</sup> One of the case studies featured in this report focuses on the labour exploitation endured by Indian migrant workers employed in the agricultural sector (see below).

Third, labour exploitation of migrant workers in Italy is not limited to agriculture. For example, trade unions have denounced labour exploitation and discrimination against migrant workers in the construction sector.<sup>107</sup> Abuses by gang-masters illegally employing workers in exploitative working conditions, a phenomenon known as *caporalato* and sometimes linked to mafia-type criminal organizations, are particularly widespread not only in agriculture, but also in the construction sector.<sup>108</sup>

### CASE STUDY: LABOUR EXPLOITATION OF INDIAN MIGRANTS IN THE LATINA AREA

The area around Latina, a town in the Lazio region about 70 km from Rome, has traditionally been characterised by agricultural migration: during the 1930s thousands of poor agricultural workers from Northern Italy were called in to settle in the newly-reclaimed Pontine Marshes. According to official data, nowadays one in three agricultural workers is a foreign national.<sup>109</sup> However, the real figure, including undeclared and irregular migrant workers, is higher: according to a trade union representative, up to 80 per cent of agricultural workers in the Latina area are foreign nationals.<sup>110</sup> During 2011 Italian authorities carried out 93 labour inspections in the agriculture sector of the Latina area: 57 (61 per cent) of the companies inspected were found to be in violation of labour and social security legislation.<sup>111</sup>

According to official statistics, 38,000 regular migrants were living in the Latina area by the end of 2010, 6.8 per cent of the total population.<sup>112</sup> About 7,000 of them are Indian nationals, mostly of Sikh faith and originating from the Indian state of Punjab.<sup>113</sup> Amnesty International's research focused on this community.

#### LABOUR EXPLOITATION: MULTIPLE FORMS OF ABUSE

When Amnesty International visited the Latina area, in June 2012, many Indian agricultural workers were working 9-10 hours a day from Monday to Saturday, plus half a day on Sunday morning, for about 3 – 3.50 euros an hour.<sup>114</sup> Some workers, all of them with valid residence permits, stated that they were working six days a week for 4 to 5 euros per hour.<sup>115</sup> According to the minimum standards agreed between trade unions and employers' organisations, agricultural workers in the Latina area should work 6.5 hours a day, six days a week, for a gross hourly rate of 8.26 euros (between 5.60 and 6.60 euros after taxes).<sup>116</sup> Only one of the 25 migrant workers interviewed by Amnesty International reported being paid 8 euros per hour.<sup>117</sup> Migrants interviewed by Amnesty International reported that, where Italian nationals were working alongside Indian nationals, the Italian nationals were paid better and had better working conditions.<sup>118</sup>

Non-payment of wages, as well as delayed and/or partial payment are reportedly very common. **"Sunny"** (not his real name) – an Indian migrant worker who does not have documents and works without a contract - told Amnesty International:

"I work 9-10 hours a day from Monday to Saturday, then 5 hours on Sunday morning, for 3 euros an hour. The employer should pay me 600-700 euros a month and my plan was to send 500 euros a month to my father, mother and sister in India. However, the employer has not been paying me my full salary for the past seven months. He gives me just 100 euros a month for living expenses. My family in India had to ask for money from other families. I don't have a contract with the employer, so I cannot leave because I would lose my money. I can't go to the police because I don't have documents: they would take my fingerprints and I would have to leave. The only option for me is waiting to be paid."<sup>119</sup>

Although irregular migrant workers tend to be paid less than regular ones, regular

status does not necessarily guarantee better wages or a regular contact. **“Sukhi”**, a regular migrant worker from India, told Amnesty International:

“I am paid about 3.10 euros per hour. I don't get any holidays – Sundays, national holidays or even Labour Day. I should earn about 800-850 per month, but the employer doesn't give me the entire amount. Sometimes he gives me 200 euros, another month it is 400 euros. He gives me the back-pay several months later – usually when I plan to go back to India.”<sup>120</sup>

Several regular migrants reported being paid less than the official salary on their pay slip or that, while they were working full time, their pay slip (on the basis of which their social security contributions are calculated) only showed a few days of work.<sup>121</sup> Some employers seem to arbitrarily deduct further amounts as “taxes”. **“Micky”** (not his real name), a regular migrant worker from India, told Amnesty International:

“I work about 20 days a month, between 8-10 hours a day. My contract says that I should be paid 1090 Euros a month, but I only receive between 500-600 per month. The pay is 4 euros per hour; then the employer cuts about 150-200 per month for taxes and for providing the contract etc.”<sup>122</sup>

### **“WE ARE ALSO A SUBSIDY”**

**“Sheru”** (not his real name), a migrant worker from India, told Amnesty International:

“People in Punjab take loans or sell land or borrow from family to come here. When they arrive, they realise that work is tough to find. But they also have to make enough to repay or recover the initial investment. They thus take whatever wage they can get. In the process, they undercut the workers who were already here – this brings the wages further down. The only people who benefit from this are the agents who make the money out of selling the papers and the employers who are pushing the wages lower.”<sup>123</sup>

Several Indian migrant workers interviewed by Amnesty International questioned the good faith of the Italian government in connection with its stated intention to curb labour exploitation. **“Bunty”** (not his real name), a migrant worker from India, told Amnesty International:

“The government is well aware of what the employers do. They don't care. We are also a subsidy. The government knows that demand and supply will keep the [wages] market low and they do nothing to stop it.”<sup>124</sup>

## **CASE STUDY: LABOUR EXPLOITATION OF AFRICAN MIGRANTS IN THE CASERTA AREA**

The Caserta area, in the Campania region, is about 200 km south of Rome. According to official statistics, it hosts about 23,000 foreign nationals (including EU nationals), 2.5 per cent of the population.<sup>125</sup> In fact, the real ratio is probably much higher. The foreign population of Castel Volturno, a small coastal town on the Tyrrhenian sea, is officially 2,900 people out of a total of about 23,000 inhabitants; in reality, it is estimated to host about 7,000 foreign nationals, mostly

of African origin.<sup>126</sup> Sub-Saharan Africans, especially from Burkina Faso, Ghana and Nigeria, are the largest group, followed by migrants from North Africa: Algeria, Egypt, Morocco and Tunisia.<sup>127</sup>

Most of the African migrants interviewed by Amnesty International in the Caserta area arrived in Italy irregularly by boat from Libya, often after long and dangerous journeys. In the past few years, however, many regular migrants who had lost their job in Northern Italy because of the recent economic crisis moved to the area, attracted by the possibility of finding a job in the informal sector and by the perceived lack of controls on the part of law-enforcement authorities.<sup>128</sup> Very few migrant workers in the Caserta area hold residence permits for seasonal work (218 in 2010; 155 in 2011).<sup>129</sup>

Regular and irregular migrants are employed in the agricultural sector - picking tomatoes and fruit, the dairy industry, construction and tourism. Many of the migrants who live in the area travel regularly to other regions in Italy to look for agricultural work linked to the picking/harvesting seasons. Several of the migrants interviewed by Amnesty International in the Caserta area had been working in Calabria during the orange-picking season, in winter, and in Apulia during the tomato and watermelon-picking seasons, in summer.<sup>130</sup>

#### LABOUR EXPLOITATION

Employers looking for workers to perform unskilled or low-skilled labour in the Caserta area go to the main roundabouts and squares, where migrant workers assemble in the early hours of the morning, waiting to be picked up for a day's work. In addition to agricultural work, such labour can include cleaning, gardening, and decorating. There are several of these roundabouts and squares; some of the migrants call them "kalifoo grounds", a term reportedly used by migrants in Libya. "**Hassan**" (not his real name), a migrant worker from Cote d'Ivoire, told Amnesty International:

At the moment I don't have a job. Every morning I look for work at the roundabouts. I go out at 4.30am. By 5 I am at the bus stop; I go to the roundabout in Licola or the one in Giugliano. I wait for someone to come and take me to work. But we are many. The one who arrives at the car first gets to work."<sup>131</sup>

The minimum pay for an agricultural worker in the Caserta area should start at 36.91 euros (before taxes) for 6 and a half hours of work (5.70 euros per hour).<sup>132</sup> However, at the roundabouts the bargaining power of migrant workers, whatever their immigration status, is virtually non-existent. "Any job that anyone gives me I take", explained "**Body**" (not his real name), a migrant worker from Ghana.<sup>133</sup> The standard pay for a day of work (8 to 10 hours) is 20-30 euros, that is less than 3.75 euros an hour.<sup>134</sup> Occasionally, depending on the goodwill of the employer, a day of work can be paid 35 or even 45 euros, i.e. up to 5.60 euros an hour.<sup>135</sup> That is, however, an exception. Some migrants reportedly accept to work for as little as 15-20 euros a day.<sup>136</sup> "**Afram**" (not his real name), a migrant worker from Cote d'Ivoire, told Amnesty International:

"Today I worked from 6am to 6pm, with a 30-minutes break, hoeing a field. I

was paid 20 euros. If you don't like the pay there are other people [who would work for that pay]".<sup>137</sup>

The work on offer at the roundabouts and on squares is precarious, completely undeclared and does not offer any guarantees in terms of health and safety or social security. Many migrant workers accept it because as a result of their irregular status they do not have a real alternative. **"Ismael"** (not his real name), a migrant worker from Burkina Faso, told Amnesty International:

"When you don't have papers you can only get work on the black market, which is badly paid. We get 25 to 30 euros per day for eight or nine hours of work [from 2.75 to 3.75 euros per hour]. But if we get hurt we don't get anything."<sup>138</sup>

Non payment of wages is common. Because of the nature of the work on offer at the roundabouts, often the identity of the employer of the day is unknown, making it extremely difficult to recover the wages due. **"Ali"** (not his real name), a Tunisian migrant worker, told Amnesty International:

"Many migrant workers do not get paid. Once I found a job for a week. The employer owed me 250 euros but he disappeared. I don't know his name and I cannot track him down."<sup>139</sup>

**"Baba"** (not his real name), a migrant worker from Ghana, told Amnesty International:

"Sometimes you agree 25-30 euros, but at the end of the day they give you 15-20 euros. It happened to me three or four times. It happened to me twice that the employer told me to come tomorrow, that I would be paid at the end of the job. But the day after they weren't at the workplace anymore and they did not come back. So I did not get paid at all."<sup>140</sup>

## PART THREE: THE FAILURE TO ENSURE JUSTICE FOR VICTIMS OF LABOUR EXPLOITATION

**The Rosarno riots were not about attacking the law, but about gaining access to the law.**

Roberto Saviano<sup>141</sup>

Italian legislation recognises the right to access to justice to all foreign nationals in broad terms, including access to the judicial determination of rights and interests, non-discrimination before the public administration and access to public services.<sup>142</sup> However, while the right to access justice and to a remedy for violations of labour rights is formally guaranteed to all migrants, the realization of this right in practice is seriously limited.

Some Italian prosecution authorities are making efforts to investigate and prosecute some cases of extreme labour exploitation. In May 2012, for example, the authorities in Lecce, in the Apulia region, issued 22 arrest warrants against Italian, Tunisian, Sudanese and Algerian nationals, for alleged trafficking of human beings to Italy for the purposes of labour exploitation; the cases concerned mostly Tunisian and Ghanaian migrants in Southern Italy who had endured “slavery-like conditions” (*condizione analoga alla schiavitù*).<sup>143</sup> However, the cases of serious exploitation that tend to reach the attention of prosecution authorities are a small minority; generally, they are cases of most severe labour exploitation. The vast majority of cases that do not reach the severity of criminal offences relating to “slavery”, “slavery-like practices”; “other forms of forced labour” or “trafficking”, are overlooked.<sup>144</sup> This leaves an accountability gap for lesser but still serious and widespread labour rights abuses.

Amnesty International considers that the Italian authorities’ failure to ensure justice for victims of labour exploitation is the result of shortcomings in Italian migration policy, in the legal framework and in the enforcement system set up to protect workers from labour exploitation. Measures aimed at implementing Italian migration policy, such as criminalising irregular migration and charging labour inspectors with migration control enforcement (see below), create obstacles to the realization of the right of migrant workers in an irregular situation to seek and obtain a remedy for violations of their human rights. On the other hand, measures intended to protect workers from labour exploitation, such as the “Rosarno Law” and the criminalisation of “caporalato”, are ineffective (see below).

## THE CRIMINAL OFFENCE OF “ILLEGAL ENTRY AND STAY”

In May 2008 the then newly established government announced several emergency legislative measures, known as the Security Package (*pacchetto sicurezza*), which, the authorities stated, were intended to fight “widespread illegality linked to illegal migration and organized crime”.<sup>145</sup> Among other measures, the Security Package introduced the criminal offence of “illegal entry and stay within the territory of the state”, capable of attracting a monetary penalty of 5,000-10,000 euros for those found guilty.<sup>146</sup>

Amnesty International has expressed concern on several measures included in the Security Package. In particular, the organisation believes that the criminalisation of “irregular entry and stay” is inconsistent with Italy's obligations under international law, as: (i) it is unnecessary and disproportionate; and (ii) it creates obstacles to irregular migrants' access to justice.

Additionally, Amnesty International is gravely concerned that criminalization of “irregular entry and stay” could further stigmatize migrants and boost xenophobia and discrimination against them.<sup>147</sup> The ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) expressed concern that the criminalisation of irregular migration in the Security Package:

“will further marginalize and stigmatize migrant workers in an irregular situation, and increase their vulnerability to exploitation and violation of their basic human rights.”<sup>148</sup>

### CRIMINALIZING IRREGULAR MIGRATION IS UNNECESSARY AND DISPROPORTIONATE

While immigration control may be a legitimate interest of the state, Amnesty International considers that the criminalization of irregular migration is an unnecessary and disproportionate measure for the state to take. The UN Working Group on Arbitrary Detention (WGAD) maintained that:

“criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention.”<sup>149</sup>

This position is reinforced by the position of the UN Special Rapporteur on the human rights of migrants, who has stated that:

“irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security. It is important to emphasize that irregular migrants are not criminals per se and should not be treated as such.”<sup>150</sup>



## THE RIGHT TO SEEK AND OBTAIN AN EFFECTIVE REMEDY FOR HUMAN RIGHTS VIOLATIONS

The right to seek and obtain an effective remedy for human rights violations is recognised under Article 2(3) and 14 of the International Covenant on Civil and Political Rights (ICCPR), and Article 13 of the European Convention on Human Rights (ECHR), in conjunction with other Articles. Referring specifically to violations of the right to work, the UN Committee on Economic, Social and Cultural Rights clarified:

“Any person or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level. At the national level trade unions and human rights commissions should play an important role in defending the right to work. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition.”<sup>151</sup>

Migrants who suffer human rights violations or abuses, both regular and irregular, should have access to justice and be able to report and/or file legal complaints without fear of deportation or repatriation. The UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recommended that:

“States should establish effective and accessible channels which would allow all migrant workers to lodge complaints for violations of their rights without retaliation against them on the ground that they may be in an irregular situation.”<sup>152</sup>

Under the International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention of 1975 (No. 143), which Italy ratified in 1981, migrant workers in an irregular situation have the right to equality of treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits.<sup>153</sup> This includes the possibility to claim such rights before a competent body.<sup>154</sup>

### REPORTING REQUIREMENTS CREATE OBSTACLES TO IRREGULAR MIGRANTS' ACCESS TO JUSTICE

Amnesty International believes that the provision of the Security Package criminalizing “illegal entry and stay” creates obstacles to irregular migrants' access to justice and is therefore inconsistent with Italy's obligation to guarantee a practical and effective remedy for human rights violations.

Given that “illegal entry and stay” is a crime, irregular migration status automatically triggers the requirement of any public officer (including all civil servants, local authority employees, teachers and any other person in charge of a public service) to report all suspected criminal acts to the police or judicial authorities.<sup>155</sup> The only significant exception to this statutory duty applies to doctors and other health professionals.<sup>156</sup> Any irregular migrant wanting to report abuse, including labour exploitation, faces the risk of exposing himself or herself to the real danger of being reported, charged with the offence of “irregular entry or stay”, and even detained and ultimately expelled. As a result of this, many irregular migrants are afraid to contact the authorities and avoid seeking legal remedies, even where they are entitled to them.<sup>157</sup>

“**Jean-Baptiste**” (not his real name), a migrant worker from Burkina Faso, told

Amnesty International:

“When the employer does not pay, what can you do to get your money? Without documents, how can you go to the police? You can't go to the police or to the *carabinieri* without documents. Without documents, you get expelled. But you haven't done anything wrong...”<sup>158</sup>

“**Monu**”, an Indian migrant worker, told Amnesty International:

“Since I am irregular, there is nowhere I can go to get help, if I don't get the money.”<sup>159</sup>

In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) has emphasised:

“The possibility for migrant workers to claim certain rights arising out of past employment with respect to remuneration, social security and other benefits before a competent body, as provided by Articles 9(1) and (2) of the [Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)] may also remain merely theoretical if migrant workers in an irregular situation who report violations of these rights are immediately expelled.”<sup>160</sup>

The European Union Fundamental Rights Agency considered:

“Access to justice is a crucial right since the enforcement of all other fundamental rights hinges upon it in the event of a breach. Practical obstacles to accessing justice, such as reporting duties that may reveal a migrant's identity and/or whereabouts, should be removed”.<sup>161</sup>

## ADDITIONAL OBSTACLES TO ACCESS TO JUSTICE

The lack of a written contract makes it difficult for the employee to identify the employer and prove what contractual terms were originally agreed, including with respect to fundamental terms such as hours and remuneration. This situation operates as an additional obstacle to redress for both regular and irregular migrant workers. “**Baba**” (not his real name), a migrant worker from Ghana, told Amnesty International: “Who are you going to complain to? You can't go to the police because you don't have a work contract; you know the workplace but you don't know where the employer lives.”<sup>162</sup>

Further obstacles await those migrant workers who decide to report the abuses they have suffered. “**Ali**” (not his real name), a migrant worker from Tunisia, told Amnesty International: “Even if we call the *carabinieri* when we don't get paid, they are not interested. It is our word against the employer's.”<sup>163</sup>

Amnesty International received worrying reports of migrant workers being refused the opportunity to report human rights abuses because of their irregular status. In July 2011 “**Shabi**” had an altercation with his employer, who had refused to complete the process for his residence permit and pay him, at the end of which the employer hit him with a wooden stick. When he tried to report the incident to the police station, “**Shabi**” was told that a report could not be filed because he did not have a residence permit. His report was filed only when he went to a *carabinieri* station with his lawyer and a union representative.<sup>164</sup>

## LABOUR INSPECTIONS: FEW AND INEFFECTIVE

The effectiveness of labour inspections as currently carried out in detecting situations of exploitation of migrant workers, especially those in an irregular migration status, is questionable. During the 2010 campaign of increased inspections the position of 31,007 agricultural workers was verified, of which 2,285 (7.4 per cent) were non-EU nationals; it was discovered that 75 of them (0.2 per cent) did not hold a valid visa.<sup>165</sup> These results do not correspond to general data about employment of foreign workers in agriculture, according to which migrant workers provide nearly a quarter of the days worked overall in this sector. On the basis of a research conducted in several areas of Southern Italy, IOM noted that the campaign of extraordinary inspections “did not manage to capture completely the specific situation of migrant workers.”<sup>166</sup>

Reportedly, one of the main reasons for this failure is that employers can easily elude labour inspections, as ordinary inspections are carried out at regular intervals and at predictable times, while the timings of “extraordinary” ones are often known in advance despite the fact that they should be unannounced.<sup>167</sup> Migrant workers interviewed by IOM maintained that their employers were able to send the irregular migrants away before labour inspections.<sup>168</sup>

The migrant workers interviewed by Amnesty International in the Latina area reported that the labour inspections were few and ineffective. Several reported that they had never seen a labour inspector in their years of work in Italy.<sup>169</sup> “**Bunty**” (not his real name), an Indian migrant worker, told Amnesty international:

“I don't even know what these inspectors look like – they are the invisible men.”<sup>170</sup>

Other migrant workers interviewed by Amnesty International in the Latina area mentioned inspections where irregular migrants had run away into the fields, fearing that they would be reported to the authorities as irregular migrants.<sup>171</sup> One worker told Amnesty International that a few years ago he had been working when an inspection took place; however, “the inspectors were only interested in whether tax was being paid; they were not interested in the working conditions”.<sup>172</sup>

## CARRYING OUT EFFECTIVE LABOUR INSPECTIONS

According to the ILO Labour Inspection Convention, 1947 (No. 81), which Italy ratified in 1952, labour inspections have three functions: enforcement of the legislation on conditions of work; technical advice and information on its application; and participation in its improvement. Any further duties which may be entrusted to labour inspectors should not interfere with their primary duties or prejudice their authority and impartiality.<sup>173</sup> Under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which Italy ratified in 1981, the system of inspection in agriculture must cover all wage workers or apprentices, “however they may be remunerated and whatever the type, form or duration of their contract.”<sup>174</sup>

With respect to migration control in Italy, the ILO Committee of Experts expressly stated that “the primary duty of labour inspectors is to protect workers and not to enforce immigration law”.<sup>175</sup> The Committee clarified:

“The role of the labour inspectorate... is not to control the lawfulness of the employment relationship, but the conditions under which the work is performed. ... Whether or not their situation is lawful, the workers covered by the Convention have rights in relation to conditions of work and should be able to benefit from the same protection in certain fields, such as wages, working time and health and safety at the workplace. Workers... should not hesitate to turn to inspectors by reason of any lack of clarity in their legal situation.”<sup>176</sup>

When labour inspectors find cases of illegal employment, the irregular migrant workers involved are “doubly penalized” in that, in addition to losing their job, they face expulsion.<sup>177</sup> In these circumstances, “the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers”.<sup>178</sup> In particular:

“the action taken by inspectors should enable the implementation of legal proceedings against employers guilty of contraventions, entailing not only the imposition of adequate penalties... but also the requirement to pay any outstanding sum owed to the workers concerned for the actual duration of their period of employment.”<sup>179</sup>

#### LABOUR INSPECTIONS: TACKLING LABOUR EXPLOITATION OR CONTROLLING MIGRATION?

The concerns surrounding labour inspections, including the fact they are not adequately resourced and are generally ineffective, are compounded by a problematic legislative framework that criminalises “irregular entry and stay” and makes it a requirement for any public official to report irregular migrants to the authorities.

Italian labour inspectors are responsible for combating undeclared employment, including employment of irregular migrant workers. The introduction of the crime of “illegal entry and stay” in 2009 exacerbated the situation, as labour inspectors, like other public officials, are now under the obligation to report irregular migrants to the immigration authorities. As a result, rather than focusing on monitoring working conditions, as prescribed under international law, labour inspections instead prioritise the detection of irregular migrant workers.<sup>180</sup>

The ILO Committee of Experts has expressed concern about the compatibility of the responsibilities of labour inspectors in the field of migration control with Italy's obligations under the ILO Convention 81 on labour inspection:

“systematically involving labour inspectors in coordinated operations to combat illegal employment does nothing to promote a climate of confidence, which is necessary if cooperation on the part of workers with an irregular status of residency is to be achieved, especially in the form of reports and complaints to labour inspectors. On the contrary, it represents an obstacle to the opportunities for inspectors to obtain information regarding the conditions of work experienced by these workers”.<sup>181</sup>

## THE ARTICLE 18 RESIDENCE PERMIT SYSTEM FOR VICTIMS OF TRAFFICKING FOR LABOUR EXPLOITATION

Under Article 18 of the 1998 Consolidated Act on Immigration, foreign nationals who are victims of trafficking are entitled to a special residency permit (“residence permit for social protection”, *permesso di soggiorno per motivi di protezione sociale*), intended to give them the opportunity to “escape from the violence and from the influence of the criminal organization and to participate in an assistance and social integration programme.”<sup>182</sup> In 2007, taking note of the growing phenomenon of labour exploitation of migrant workers, the Italian government expressly clarified that Article 18 could be applied to victims of trafficking for labour exploitation.<sup>183</sup>

Until July 2012, the Article 18 residence permit system was the main protection mechanism available for migrant workers victims of labour exploitation. Unfortunately, however, a restrictive application seems to have made it largely ineffective.

Between January and December 2011, of the 700 cases of labour exploitation registered with the government’s Equal Opportunities Department, only 117 residence permits were granted under Article 18 (16.7 per cent).<sup>184</sup> Experts noted that, while the legislation grants victims of trafficking a residence permit regardless of their ability or willingness to give evidence in legal proceedings against the traffickers, in reality victims often have to report the perpetrators to the judicial authorities in order to be provided with protection and assistance.<sup>185</sup> The experience of civil society organisations working with victims of labour exploitation has also shown that the threshold for the application of Article 18 is often too high for cases of labour exploitation, even serious ones. The legal requirements for the application of Article 18, originally designed with victims of trafficking for sexual exploitation in mind, may not correspond to the situation of victims of labour exploitation.<sup>186</sup> For example, using the Article 18 residence permit system for victims of labour exploitation after the Rosarno clashes proved impossible, reportedly because it was impossible to demonstrate that the exploitation had been perpetrated by a criminal organisation.<sup>187</sup>

The criminalisation of irregular migration compounded the system’s ineffectiveness, by shifting the authorities’ attention to border control and migration enforcement. In 2011 the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that

“a ‘security package’ adopted by the Government [...] has seriously prevented law enforcement authorities from adequately identifying potential victims of trafficking”.<sup>188</sup>

To overcome the problems related to the implementation of Article 18, some civil society organisations have reached cooperation agreements with local prosecution authorities.<sup>189</sup> The fact remains, however, that many cases of labour exploitation, including cases which present elements of trafficking for labour exploitation but do not meet the threshold of Article 18, cannot be addressed through the existing law, therefore leaving the majority of victims vulnerable to continued abuse.

## THE CRIME OF “UNLAWFUL GANGMASTERING AND LABOUR EXPLOITATION”

In September 2011, a law was adopted introducing in the Italian criminal code the crime of “unlawful gang-mastering and labour exploitation” (*intermediazione illecita e sfruttamento del lavoro*), a phenomenon known in Italian as *caporalato* and defined as the act of

“conducting an organized activity of intermediation, recruiting manpower or organizing its work, characterized by exploitation, through violence, threat or intimidation, taking advantage of the workers’ situation of need or want.”<sup>190</sup>

This provision was a positive development, insofar as it introduced a new criminal law tool to combat labour exploitation, intended to be more flexible than those provided by the criminalisation of trafficking and slavery. However, doubts were expressed with respect to the actual prospects of this provision being successfully implemented.<sup>191</sup> In particular, the provision targets abusive intermediaries, but not abusive employers. Civil society organisations pointed out that *caporalato* is only one form of labour exploitation and highlighted the paradox of sanctioning “caporali” – i.e. the gang-masters - more harshly than exploitative employers recruiting their workforce without middlemen.<sup>192</sup>

Additionally, the criminalization of “illegal entry and stay” continues to make it extremely difficult for irregular migrants, who are particularly at risk of being victims of unlawful gang-mastering for labour exploitation, to report it. An early legislative proposal that included provisions to grant temporary residence permits to victims of “serious labour exploitation”,<sup>193</sup> was dropped following the change of government in April 2008. As a result, no specific protection is afforded to victims of *caporalato* who decide to report their exploiters.

## THE “ROSARNO LAW”

In July 2012 Italy adopted Legislative Decree No. 109 of 16 July 2012 (the “Rosarno Law”), which introduces some aggravating factors to the crime of employing irregular migrant workers, including the case of “particularly exploitative working conditions”, as well as the additional financial sanction of payment of the cost of return of the worker to their country of origin.<sup>194</sup>

Importantly, the Law provides also for the granting of a residence permit for humanitarian reasons to the migrant workers who are victims of “particularly exploitative working conditions”; to this purpose, however, they are required to report their employer to the authorities and cooperate in the criminal proceedings against them.<sup>195</sup> Amnesty International is concerned that this requirement fundamentally undermines the Law’s effectiveness in ensuring access to effective remedies to victims of labour exploitation. Many such victims may not be eligible for residence permits and would as such be unable to stay in the country to benefit from available remedies. The Italian government itself admitted that the new residence permits would be granted in a limited number of cases, as the criteria for the granting of such permits are even more restrictive than the criteria for the

granting of the residence permits under Article 18 (and include the additional requirement of cooperation in criminal proceedings).<sup>196</sup>

These restrictions mean that the Rosarno Law does not fulfil Italy's obligations to protect the right of everyone to the enjoyment of just and favourable conditions of work, as guaranteed under article 7 of ICESCR, among others.<sup>197</sup>

Furthermore, The "Rosarno Law" omitted to take certain non-criminal measures against employers of irregular migrants recommended in EU legislation, such as: exclusion from public subsidies, including EU funding; exclusion from participation in public contracts; closure of the work establishments or withdrawal of necessary licenses; imposition of an obligation to make back payments of outstanding remuneration to the irregular migrant workers.<sup>198</sup>

As a result of these shortcomings, the real protective effect of the "Rosarno Law" on the rights of irregular migrant workers is severely called into question.

# CONCLUSIONS AND RECOMMENDATIONS

**It is not admissible for a State of employment to protect its national production, in one or several sectors by encouraging or tolerating the employment of undocumented migrant workers in order to exploit them, taking advantage of their condition of vulnerability in relation to the employer in the State or considering them an offer of cheaper labour, either by paying them lower wages, denying or limiting their enjoyment or exercise of one or more of their labour rights, or denying them the possibility of filing a complaint about the violation of their rights before the competent authority.**

Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para170.

Amnesty International's research found evidence of widespread severe labour exploitation of migrant workers in the agricultural sector in the areas of Latina and Caserta, in particular wages considerably below the minimum agreed by unions and employers, arbitrary reductions of wages, delays or non-payment of wages and very long hours of work, in violation of Italy's obligations under several international conventions protecting labour rights. These findings reinforce those of other studies that reveal similar patterns of labour exploitation in other sectors and various other parts of Italy.

Amnesty International's findings also indicate that measures adopted by the Italian government with the stated view of controlling and regulating migration flows directly contribute to the exploitation of migrant workers. The "flows decree" mechanism, by not properly taking into account the reality of the employment situation of migrant workers and the actual demand for migrant labour, is creating an environment that facilitates the exploitation of migrant workers. The provision of the Security Package criminalizing "illegal entry and stay" creates obstacles to irregular migrants' access to justice. Irregular migrant workers who report abusive working conditions risk not only losing their job, but also being charged with the crime of "irregular entry and stay". Inevitably, irregular migrant workers – who are especially vulnerable to labour exploitation precisely because of their migration status – are deterred from exposing abusive labour conditions. Because the criminalization of "illegal entry and stay" creates obstacles to irregular migrants' access to justice, Amnesty International believes that it is inconsistent with Italy's obligation to guarantee a practical and effective remedy for all victims of human rights violations.



Additionally, this report expresses serious concerns about the lack of resources, ineffectiveness and problematic legal framework of the labour inspection system. The dysfunctional inspection system places Italy in potential breach of its obligations under the relevant ILO Labour Inspections Conventions 81 and 129.

Furthermore, Italy's current legislation focuses on the repression of trafficking and extreme forms of labour exploitation, such as forced labour and slavery, but it is inadequate to ensure protection and access to justice to victims of less extreme forms of labour exploitation. Recent measures intended to protect workers from other forms of labour exploitation, such as the criminalisation of "caporalato" (unlawful gang-mastering) and the "Rosarno Law", are largely ineffective.

**In conclusion, Amnesty International believes that the situation created by the "flows decree", the Security Package and the inadequate protection for victims of labour exploitation, facilitates the exploitation of migrant workers and create obstacles to their access to justice. The organization believes that this situation violates the country's obligation to respect, protect and fulfil the rights of migrant workers to just and favourable conditions of work, which is provided for, among others, under Art 7 of the International Covenant on Economic, Social and Cultural Rights, which Italy ratified in 1978.**

## RECOMMENDATIONS

The Italian authorities should:

- **Respect, protect and fulfil the right to just and favourable conditions of work of all migrant workers, regardless of their migration status.**

TO ENSURE THAT ITALY'S MIGRATION POLICY DOES NOT FACILITATE THE EXPLOITATION OF MIGRANT WORKERS:

- **Revise the country's migration policy in order to better take account of the reality of the labour market and to provide better protection for all migrant workers. In so doing, they should encourage dialogue and consider evidence from all relevant actors, including those civil society groups working directly with and on behalf of migrant workers.**

- **In particular, in light of the discrepancy between the entry quotas established by the Italian government and the real market demand for migrant labour, expand the regular migration channels.**

- **Implement the recommendation made by the International Organisation for Migration to grant a temporary residence permit to those migrant workers who have arrived in Italy with a visa for seasonal employment but are not in a position to convert it into a residence permit.<sup>199</sup>**

TO ENSURE ACCESS TO JUSTICE FOR MIGRANT WORKERS WHO SUFFER LABOUR EXPLOITATION:

- **Repeal the provision of the Security Package criminalizing "illegal entry and stay".**
- **Ensure that the primary purpose of labour inspections is to safeguard the rights of all workers, particularly the most vulnerable, in line with Italy's international obligations; In particular, Italian authorities should relieve labour inspectors from**

any immigration enforcement functions, allowing them to focus their resources on their primary duty to protect workers.

- Amend current legislation to allow irregular migrants to enjoy rights arising out of previous employment and to file complaints irrespective of migration status. In particular:
  - Amend current legislation to ensure that victims of labour exploitation are allowed to stay in the country at least for the duration of any relevant legal proceedings, be they criminal, civil or administrative;
  - Provide legal assistance and support to migrant workers who are victims of labour exploitation, in order to facilitate their accessing justice.
- Ensure that the scope of the legal protection offered to migrant workers at the domestic level is in line with the requirements of relevant international instruments.

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<sup>1</sup> See, for example: Klara Skrivankova, *Between decent work and forced labour: examining the continuum of exploitation*, JRF programme paper, November 2010.

<sup>2</sup> Amnesty International's interview with "Kojo" (not his real name), a migrant worker from Togo, Caserta, 9 July 2012.

<sup>3</sup> Mario Morcellini and others, *Ricerca nazionale su immigrazione e asilo nei media italiani*, Roma, December 2009; Human Rights Watch, *Everyday Intolerance: Racist and Xenophobic Violence in Italy*, March 2011.

<sup>4</sup> The Italian government expressly stated: "The phenomenon of illegal immigration in the Italian experience is often characterised by crimes committed by illegal migrants specifically related to their condition of irregular presence on the national territory." Comments by the Italian Government, Appendix to the Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008, Doc. CommDH (2008)18, 28 July 2008, p30.

<sup>5</sup> For example: International Covenant on Economic, Social and Cultural Rights (ICESCR), ILO Forced Labour Convention, 1930 (No. 29); ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), etc.

<sup>6</sup> Fondazione Ismu, *Diciassettesimo Rapporto sulle migrazioni 2011* (Milano: Franco Angeli, 2011), p7 and 35.

<sup>7</sup> Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p13. Romania, Albania, Morocco, China and Ukraine are the main countries of origin of migrants in a regular status: *ibid.*, p94.

<sup>8</sup> Fondazione Ismu, *Diciassettesimo Rapporto sulle migrazioni 2011* (Milano: Franco Angeli, 2011), p35; Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p147.

<sup>9</sup> Asylum-seekers and others whose international protection claims are refused in first instance have a right to appeal; pending a final determination of their appeal they are entitled to remain in Italy.

<sup>10</sup> This may happen for several practical reasons: travel documents cannot be obtained; travel routes to a particular destination are not viable; the individual's poor health does not allow travel; etc.

<sup>11</sup> Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p12.

<sup>12</sup> Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p273.

<sup>13</sup> Residence permits for "justice reasons" are granted to foreign nationals who need to enter Italy in order to participate in criminal proceedings (Art. 17, Consolidated Act on Immigration).

<sup>14</sup> Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para18.

<sup>15</sup> Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para10.

<sup>16</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens, 10 January 2004, para35.

<sup>17</sup> Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para170.

<sup>18</sup> Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para18.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2), UN Doc. E/C.12/GC/20, para30, footnote omitted.

<sup>20</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, 6 February 2006, para23.

<sup>21</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens, 10 January 2004, para35.

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- <sup>22</sup> Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para101.
- <sup>23</sup> Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para106.
- <sup>24</sup> Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para133-134.
- <sup>25</sup> Human Rights Committee, General Comment No. 27: Freedom of Movement (Article 12), UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para4.
- <sup>26</sup> Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, 30 September 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E>.
- <sup>27</sup> Legislative Decree no. 286 of 25 July 1998, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero".
- <sup>28</sup> Law No. 189/2002 of 30 July 2002, "Modifica alla normativa in materia di immigrazione e di asilo".
- <sup>29</sup> Art. 3.4, Consolidated Act on Immigration. Preferential quotas are granted to countries that cooperate with Italy in migration control.
- <sup>30</sup> Art. 22.2, Consolidated Act on Immigration.
- <sup>31</sup> Art. 22.4, Consolidated Act on Immigration.
- <sup>32</sup> Art. 5.3-bis and 22.6, Consolidated Act on Immigration.
- <sup>33</sup> Art. 5.3-bis and 5.3-ter, Consolidated Act on Immigration.
- <sup>34</sup> Artt. 13 and 14, Consolidated Act on Immigration.
- <sup>35</sup> For example: *Italy: Amnesty International findings and recommendations to the Italian authorities following the research visit to Lampedusa and Mineo*, Index: EUR 30/007/2011, April 2011.
- <sup>36</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Report on his mission to Italy (9-13 October 2006), UN Doc. A/HRC/4/19/Add.4, par62.
- <sup>37</sup> In 2011 employers submitted about 400,000 applications for contractual employment of migrant workers, nearly four times the number of available places under the quota set for that year (i.e. 98,080). Rete Europea Migrazioni (EMN) Italia, *Quarto Rapporto EMN Italia: Canali Migratori, Visti e flussi irregolari*, IDOS, Roma, March 2012, p89.
- <sup>38</sup> Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Cote d'Ivoire, Castel Volturno, 5 July 2012.
- <sup>39</sup> Tito Boeri, "Una ricetta contro la crisi economica? Cambiare la Bossi-Fini e le politiche sull'asilo", in ReteRadici and Fondazione IntegrAzione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p.122.
- <sup>40</sup> Between September 2011 and June 2012 the Immigration office of CGIL, a trade union, in Caserta, registered about 350 requests by employers to regularise their employment relationship with an irregular migrant. Amnesty International's interview with Emanuela Borrelli, CGIL-Immigrazione, Caserta, 9 July 2012.
- <sup>41</sup> IOM, "Stagione amara": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p3, 12, 17, 27, 31, 42.
- <sup>42</sup> IOM, "Stagione amara": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p45.
- <sup>43</sup> IOM, "Stagione amara": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p3.
- <sup>44</sup> IOM, "Stagione amara": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p12.
- <sup>45</sup> IOM, "Stagione amara": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p27, 40, 49.
- <sup>46</sup> Amnesty International's interview with "Shabi" (not his real name) an Indian migrant worker, Latina

area, 17 June 2012; "Mithu", Latina area, 18 June 2012. See also the testimonies collected in *Visit India*, a documentary by Patrizia Santangeli, 2011, <http://www.visitindia.it/>; and J.K. Saha, *Smuggling of Migrants from India to Europe and in particular to UK: A study on Punjab and Haryana*, UNODC, 2009.

<sup>47</sup> One such organisation was discovered by law-enforcement and prosecution authorities in the Latina area in 2010: "Video: Sfruttamento dell'immigrazione clandestina, 6 arresti", H24 notizie, 8 April 2010, <http://www.h24notizie.com/news/2010/04/08/videosfruttamento-dellimmigrazione-clandestina-6-arresti/>.

<sup>48</sup> Amnesty International's interview with "Sunny" (not his real name) an Indian migrant worker, Latina area, 18 June 2012.

<sup>49</sup> Amnesty International's interview with "Monu" (not his real name), Indian migrant workers, Latina area, 22 June 2012; "Chintu" (not his real name), Indian migrant worker, Latina area, June 2012.

<sup>50</sup> Amnesty International's interview with "Sonu" (not his real name), Indian migrant worker, Latina area, 21 June 2012.

<sup>51</sup> Rete Europea Migrazioni (EMN) Italia, *Quarto Rapporto EMN Italia: Canali Migratori, Visti e flussi irregolari*, IDOS, Roma, March 2012, p89.

<sup>52</sup> Naga, *Truffasi – Quando la legge crea illegalità: osservatorio sulla "sanatoria colf e badanti" del 2009*, Milano: June 2011, p3.

<sup>53</sup> IOM, *"Stagione amara": Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010.

<sup>54</sup> Naga, *Truffasi – Quando la legge crea illegalità: osservatorio sulla "sanatoria colf e badanti" del 2009*, Milano: June 2011, p4. In these cases, often the employer is a friend or a fellow countryman.

<sup>55</sup> The majority of irregular migrants arrive in Italy with a valid visa but then overstays, i.e. remains in the country after their visa or residence permit has expired. In 2010 only 4,406 people arrived in Italy irregularly by sea. Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p144. In 2011 the number of migrants arriving in Italy irregularly by sea raised to 62,692, presumably as a result of the political events in Tunisia, Egypt and Libya. Between January and April 2012 the migrants arriving through that route were about 2,000. "Ruperto (Min. Interno): "Dal primo gennaio sbarcati 2.025 clandestini", *Stranieri in Italia*, 11 May 2012.

<sup>56</sup> Between September 2011 and June 2012 the Immigration office of CGIL, a trade union, in Caserta, registered about 350 requests by employers to regularise their employment relationship with an irregular migrant. Amnesty International's interview with Emanuela Borrelli, CGIL-Immigrazione, Caserta, 9 July 2012.

<sup>57</sup> When the employer is unwilling to "regularise" the migrant worker's position, the necessary documentation is often obtained through "agencies" and other individuals, also in exchange for money.

<sup>58</sup> Amnesty International's interview with "Shabi" (not his real name), an Indian migrant worker, Latina area, 17 June 2012.

<sup>59</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012.

<sup>60</sup> Amnesty International's interview with "Sukhi" and "Raj" (not their real names), Indian migrant workers, Latina area, 18 June 2012.

<sup>61</sup> Amnesty International's interview with "Hari" (not his real name), Indian migrant worker, Latina area, 21 June 2012.

<sup>62</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Direct Request concerning Forced Labour Convention, 1930 (No.29): Italy, adopted 2011, published 101<sup>st</sup> ILC session (2012).

<sup>63</sup> Fortress Europe, "Lampedusa, clandestini si diventa", *terrelibere.org*, 2 January 2009; Antonello Mangano, "La sanatoria per le colf, l'inferno della clandestinità per i lavoratori agricoli", *terrelibere.org*, 4 September 2009; Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p18.

<sup>64</sup> Amnesty International's interview with "Hari" (not his real name), Indian migrant worker, Latina area, 21 June 2012.

- <sup>65</sup> Amnesty International's interview with "Mithu" (not his real name) an Indian migrant worker, Latina area, 18 June 2012.
- <sup>66</sup> Francesco Carchedi (ed.), *Schiavitù di ritorno: Il fenomeno del lavoro gravemente sfruttato*, Maggioli Editore, 2010, p53.
- <sup>67</sup> Fondazione ISMU, *Legislazione – regolarizzazioni*, <http://www.ismu.org/index.php?page=94>, last visited 20 August 2012. Associazione Studi Giuridici sull'Immigrazione, *La nuova emersione dei lavoratori immigrati: così gli stranieri "aiutano" lo Stato italiano a risanare la finanza pubblica, ma non hanno diritto ad una effettiva regolarizzazione*, Documento del Consiglio direttivo, 1 August 2012.
- <sup>68</sup> UN Special Rapporteur on the human rights of migrants, Report on her visit to Italy from 7 to 18 June 2004, UN Doc. E/CN.4/2005/85/Add.3, 15 November 2004, par84.
- <sup>69</sup> Law No. 94 of 15 July 2009.
- <sup>70</sup> Art. 1-ter, Law No. 102 of 3 August 2009.
- <sup>71</sup> Ibid., Art. 1-ter.2.
- <sup>72</sup> Ministero dell'Interno, Circolare no. 10, 7 August 2009, p4.
- <sup>73</sup> Ministero dell'Interno, Circolare no. 7950, 7 December 2009, p3.
- <sup>74</sup> Art. 1-ter.7, Law No. 102 of 3 August 2009.
- <sup>75</sup> Ministero dell'Interno, Circolare no. 7950, 7 December 2009, p3.
- <sup>76</sup> Ibid.
- <sup>77</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. According to the Directive, "illegally staying third-country national" means a "third-country national present on the territory of a Member State, who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State" (Article 2(b)).
- <sup>78</sup> Art. 5, Legislative Decree No. 109 of 16 July 2012.
- <sup>79</sup> Art. 5, sections 1, 5 and 9, Legislative Decree No. 109 of 16 July 2012.
- <sup>80</sup> Ibid., Art. 5.1.
- <sup>81</sup> Ministero dell'Interno, *Emersione dal lavoro irregolare dei lavoratori stranieri extracomunitari: Frequently Asked Questions*, [integrazionemigranti.gov.it](http://integrazionemigranti.gov.it), 21 September 2012.
- <sup>82</sup> "Intervista a Mimma D'amico sull'esito del processo di emersione dal lavoro irregolare degli immigrati a Caserta", Radio Radicale, 1 October 2012.
- <sup>83</sup> Italy: The regularisation should protect the rights of migrant workers, Index: EUR 30/012/2012, September 2012.
- <sup>84</sup> "Rabbia e paura, le lacrime di Kamal", *La Repubblica*, 8 January 2010.
- <sup>85</sup> "Rosarno, caccia all'immigrato", *La Repubblica*, 9 January 2010.
- <sup>86</sup> "Rosarno, Maroni: caos per troppa tolleranza", *TG24 Sky*, 8 January 2010; Alberto Custodero, "Rosarno, scattano le espulsioni", *La Repubblica*, 11 January 2010.
- <sup>87</sup> Ministero dell'Interno, Informativa del Ministro dell'Interno sui fatti di Rosarno – Senato della Repubblica, 12 January 2010, p5.
- <sup>88</sup> Amnesty International, *Italy: All migrants must be protected against attacks and exploitation*, Index: EUR 30/003/2010, 12 January 2010.
- <sup>89</sup> Medici Senza Frontiere, *Una stagione all'inferno*, January 2008, p20.
- <sup>90</sup> Amnesty International, Interview with "Samuel" (not his real name) a migrant worker from Burkina Faso, Caserta, 11 July 2012.
- <sup>91</sup> Amnesty International, interview with "Kojo" (not his real name) a migrant worker from Togo, Caserta, 9 July 2012.
- <sup>92</sup> Amnesty International's interview with "Baba" (not his real name), Ghanaian migrant workers, Caserta, 4 July 2012.
- <sup>93</sup> In fact, the labour exploitation and dire living conditions of migrant workers in the Rosarno area had been denounced by NGOs and media since at least 2005. Medici Senza Frontiere – Missione Italia, /

*frutti dell'ipocrisia: Storie di chi l'agricoltura la fa. Di nascosto*, March 2005; Felicity Lawrence, "Bitter harvest", *The Guardian*, 19 December 2006.

<sup>94</sup> Polizia di Stato, "Rosarno: immigrati sfruttati da 'caporali', decine di arresti" (press release), 26 April 2010.

<sup>95</sup> Ministero dell'Interno, Informativa del Ministro dell'Interno sui fatti di Rosarno – Senato della Repubblica, 12 January 2010, p9.

<sup>96</sup> A survey of the administrative status of a sample of 150 African migrant workers who were in the Rosarno area during winter 2011-2012 showed that 71.9 per cent of them had an irregular migration status; 20.2 per cent had a regular migration status; and 7.9 per cent were refugees or asylum seekers. However, 76.5 per cent of the workers interviewed had requested international protection at some point of their stay in Italy; 68.6 per cent of them were rejected asylum seekers. ReteRadici and Fondazione IntegrAzione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p51. According to the authors, the nature of the survey led to over-representing irregular migrants.

<sup>97</sup> See: ReteRadici and Fondazione IntegrAzione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p.25ff.

<sup>98</sup> ReteRadici and Fondazione IntegrAzione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p.54-55.

<sup>99</sup> ReteRadici, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2010/11*, April 2011, p137.

<sup>100</sup> Amnesty International, Interview with "Samuel" (not his real name) a migrant worker from Burkina Faso, Caserta, 11 July 2012.

<sup>101</sup> The work of some NGOs and journalists are notable exceptions. For example: Medici Senza Frontiere, *Una stagione all'inferno: Rapporto sulle condizioni degli immigrati impiegati in agricoltura nelle regioni del Sud Italia*, 2008; Fabrizio Gatti, "I was a slave in Puglia", *L'Espresso*, 4 September 2006.

<sup>102</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012.

<sup>103</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p13. This study refers to a "standard" pay of 20-25 euros a day (about 3 euros per hour).

<sup>104</sup> For example: Antonello Mangano, "'Le vacche stanno meglio degli africani'. Saluzzo, la fine della stagione di raccolta", *Terrelibere*, 14 October 2012.

<sup>105</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p38.

<sup>106</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p111.

<sup>107</sup> Emanuele Galossi and Maria Mora, *I lavoratori stranieri nel settore edile: III Rapporto IRES-FILLEA*, December 2008.

<sup>108</sup> For example: Antonio Bianco, "La Capitale e il caporalato edile: 'Una giornata tra uomini e caporali'", *Paese Sera*, 26 July 2011; Alessandra Coppola, "Edilizia, caporalato via sms: 'Sei euro l'ora a noi immigrati'", *Corriere della Sera*, 27 April 2012.

<sup>109</sup> Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p394.

<sup>110</sup> Amnesty International's interview with Giovanni Gioia, FLAI-CGIL Latina, Latina area, 18 June 2012.

<sup>111</sup> Ministero del Lavoro e delle Politiche Sociali, Direzione Regionale del Lavoro per il Lazio, *Attività ispettiva e stato del mercato del lavoro: Relazione di sintesi – anno 2011*, 3 April 2012, p20.

<sup>112</sup> Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p459, 474 and 479.

<sup>113</sup> Marco Omizzolo, 'I Sikh a Latina, una storia trentennale di lavoro agricolo', *Libertà Civili*, September-October 2010, p108ff, at p110.

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<sup>114</sup> For example: Amnesty International's interview with "Sunny" (not his real name), an Indian migrant worker, Latina area, 18 June 2012.

<sup>115</sup> Amnesty International's interview with "Chintu" (not his real name), Indian migrant worker, Latina area, June 2012.

<sup>116</sup> *Contratto Provinciale di Lavoro per gli operai agricoli e florovivaisti della Provincia di Latina: 1 Gennaio 2008 -31 Dicembre 2011*, Latina, 24 July 2008; *Tabella paga degli operai agricoli e florovivaistici della provincial di Latina in vigore dal 1/5/2010*. This is an agreement between trade unions and employers' organisations, which determines minimum standards for individual work contracts. In June 2012 this agreement was in the process of being re-negotiated.

<sup>117</sup> Amnesty International's interview with "Bobby" (not his real name), Indian migrant worker, Latina area, 19 June 2012.

<sup>118</sup> Amnesty International's interview with "Sukhi" (not his real name) an Indian migrant worker, Latina area, 18 June 2012; "Monu", Latina area, 22 June 2012.

<sup>119</sup> Amnesty International's interview with "Sunny" (not his real name), an Indian migrant worker, Latina area, 18 June 2012.

<sup>120</sup> Amnesty International's interview with "Sukhi" (not his real name) an Indian migrant worker, Latina area, 18 June 2012; "Preet", Latina area, 19 June 2012.

<sup>121</sup> Amnesty International's interview with "Sukhi" (not his real name) an Indian migrant worker, Latina area, 18 June 2012.

<sup>122</sup> Amnesty International's interview with "Micky" (not his real name), Indian migrant worker, Latina area, 22 June 2012.

<sup>123</sup> Amnesty International's interview with "Sheru" (not his real name), Indian migrant worker, Latina area, 20 June 2012.

<sup>124</sup> Amnesty International's interview with "Bunty" (not his real name), Indian migrant worker, Latina area, 19 June 2012.

<sup>125</sup> Source: Questura di Caserta, 12 June 2012.

<sup>126</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p100.

<sup>127</sup> IOM, *Praesidium V: Rapporto sulla situazione dei migranti presenti nella provincial di Caserta e nell'area di Castel Volturno, Gennaio-Aprile 2010*, p3.

<sup>128</sup> Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Cote d'Ivoire, Castel Volturno, 5 July 2012.

<sup>129</sup> Source: Questura di Caserta. IOM noted that, in 2009, 868 authorisations (*nulla osta*) for seasonal work were granted against 4,142 applications (about 20 per cent of the applications). Of these, only 249 were converted in a residence permit for seasonal work – 28.7 per cent of the authorisations, 6 per cent of the applications. IOM, *"Stagione amara": Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p11-12.

<sup>130</sup> Amnesty International, Interview with "Samuel" (not his real name) from Burkina Faso, Caserta, 11 July 2012.

<sup>131</sup> Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Cote d'Ivoire, Castel Volturno, 5 July 2012.

<sup>132</sup> These are the minimum wages set between trade unions and employers' organisations: Amnesty International's interview with Angelo Paoletta, FLAI-CGIL, Caserta, 9 July 2012.

<sup>133</sup> Amnesty International's interview with "Body" (not his real name), migrant worker from Ghana, Caserta, 3 July 2012.

<sup>134</sup> Amnesty International's interviews with "Jean-Baptiste" (not his real name), a migrant worker from Burkina Faso, Caserta, 9 July 2012; "Ali" (not his real name), a Tunisian migrant worker, Villa Literno, 29 June and 10 July 2012.

<sup>135</sup> Amnesty International's interview with "Hassan" (not his real name), a migrant worker from Cote



d'Ivoire, Castel Volturno, 5 July 2012.

<sup>136</sup> Amnesty International, Interview with "Ali" (not his real name), a Tunisian migrant worker, Villa Literno, 29 June and 10 July 2012.

<sup>137</sup> Amnesty International's interview with "Afram" (not his real name), migrant worker from Cote d'Ivoire, Caserta, 4 July 2012.

<sup>138</sup> Amnesty International's interview with "Ismael", a migrant worker from Burkina Faso, Caserta, 9 July 2012.

<sup>139</sup> Amnesty International, Interview with "Ali" (not his real name), a Tunisian migrant worker, Caserta area, 29 June and 10 July 2012.

<sup>140</sup> Amnesty International's interview with "Baba" (not his real name), Ghanaian migrant workers, Caserta, 4 July 2012.

<sup>141</sup> Roberto Saviano, "Italy's African heroes", *The New York Times*, 25 January 2010.

<sup>142</sup> "Allo straniero è riconosciuta parità di trattamento con il cittadino relativamente alla tutela giurisdizionale dei diritti e degli interessi legittimi, nei rapporti con la pubblica amministrazione e nell'accesso ai pubblici servizi, nei limiti e nei modi previsti dalla legge." Art. 2.5, Decreto legislativo 25 luglio 1998, n. 286.

<sup>143</sup> 'Schiavitù nei campi: ventidue arresti tra Puglia, Campania, Calabria, Sicilia e Toscana. A Nardò i pilastri dell'organizzazione criminale', *Porta di Mare* website, 23 May 2012; 'L'indagine avviata dalla procura, I dettagli', *ibid.*; Estratto dell'ordinanza di custodia cautelare, *ibid.*

<sup>144</sup> Enrico Pugliese and others, *Diritti Violati: Indagine sulle condizioni di vita dei lavoratori immigrati in aree rurali del Sud Italia e sulle violazioni dei loro diritti umani e sociali*, Cooperativa sociale Dedalus, May 2012, p26.

<sup>145</sup> Preamble, Decree-Law No. 92/2008 of 23 May 2008, "Urgent measures concerning public security", *Gazzetta ufficiale* No. 122 of 26 May 2008 (translation by Amnesty International). Decree-Law 92/2008 was converted into law and partially modified by Law No. 125/2008 of 24 July 2008, "Conversion into law, with modifications, of Decree-Law No. 92 of 23 May 2008, adopting urgent measures concerning public security", *Gazzetta ufficiale* No. 173 of 25 July 2008.

<sup>146</sup> Art. 1.16, Law No. 94/2009 of 15 July 2009, "Provisions concerning public security", *Gazzetta Ufficiale* No. 170 of 24 July 2009, amending Legislative Decree No. 286/1998 of 25 July 1998, "Consolidated text of the provisions concerning migration regulation and norms on the status of non-nationals", *Gazzetta ufficiale* No. 191 of 18 August 1998.

<sup>147</sup> Amnesty International, *Briefing to the UN Committee on the Elimination of Racial Discrimination: 80<sup>th</sup> session* (Index: EUR 30/001/2012), February 2012.

<sup>148</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Direct Request concerning Forced Labour Convention, 1930 (No.29): Italy, adopted 2009, published 99<sup>th</sup> ILC session (2010). The ILO Committee of Experts on the Application of Conventions and Recommendations is a body set up to examine the application of ILO ratified conventions by government parties.

<sup>149</sup> Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/7/4, 10 January 2008, par53. See also: Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/10/21, 16 February 2009, par68.

<sup>150</sup> UN Special Rapporteur on the human rights of migrants, Report to the Human Rights Council, UN Doc. A/HRC/20/24, 2 April 2012, par13.

<sup>151</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, 6 February 2006, para48. The UN Committee on Economic, Social and Cultural Rights is a treaty body established under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to supervise compliance with and implementation of the ICESCR by state parties.

<sup>152</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Contribution by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to the High-Level Dialogue on Migration and Development of the General Assembly, UN Doc. A/61/120, par15(f). The UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families is a treaty body established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to supervise compliance with and implementation of the Convention by state parties.

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<sup>153</sup> Article 9, Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (ILO Convention No. 143). Italy ratified the Convention on 23 June 1981.

<sup>154</sup> See also: ILO Migrant Workers Recommendation, 1975 (No. 151), para34.

<sup>155</sup> Art. 361 and 362 of the Italian Criminal Code.

<sup>156</sup> Under Art. 35.5 of Legislative Decree No. 286/1998 of 25 July 1998, access to health services by irregular migrants "will not entail any kind of reporting to the authorities" of the individual's irregular migration status (reporting ban) ("Consolidated text of the provisions concerning migration regulation and norms on the status of foreigner nationals", *Gazzetta ufficiale* No. 191 of 18 August 1998). During the drafting of Law 94/2009, the Senate (Italian Parliament's higher chamber) decided to delete the 1998 provision banning medical personnel from reporting irregular migrants who access the health system. Such a decision sparked a campaign by health professional unions, which argued that the elimination of the reporting ban would violate the migrants' right to health. Law 94/2009, as finally adopted, did not modify the 1998 reporting ban. In addition, it specified that a valid residence permit is not necessary to access "urgent or essential" health services. The situation remained confused, however, and the Italian government had to clarify later that the new legislation does not impose on medical personnel any obligation to denounce irregular migrants: Ministry of Interior, Circular No. 12/09, 27 November 2009.

<sup>157</sup> National media have reported several cases of irregular migrants who decided not to report the labour abuses suffered due to the risk of being charged with the crime of "illegal entry and stay". See for example: Fabrizio Gatti, "Campania, schiavi senza fine", *L'Espresso*, 17 December 2010.

<sup>158</sup> Amnesty International's interview with "Jean-Baptiste" (not his real name), a migrant worker from Burkina Faso, Caserta, 9 July 2012. The *Carabinieri* are a law-enforcement force responsible to the Minister of Defence.

<sup>159</sup> Amnesty International's interview with "Monu" (not his real name), Indian migrant worker, Latina area, 22 June 2012.

<sup>160</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Observation concerning the Migrant Workers (Supplementary provisions) Convention, 1975 (No. 143): Italy, adopted 2009, published 99<sup>th</sup> ILC session (2010).

<sup>161</sup> European Union Agency for Fundamental Rights, *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, 2011, p9.

<sup>162</sup> Amnesty International's interview with "Baba" (not his real name), Ghanaian migrant workers, Caserta, 4 July 2012.

<sup>163</sup> Amnesty International, Interview with "Ali" (not his real name), a Tunisian migrant worker, Villa Literno, 29 June and 10 July 2012.

<sup>164</sup> Amnesty International's interview with "Shabi" (not his real name), an Indian migrant worker, Latina area, 17 June 2012.

<sup>165</sup> Ministero del Lavoro e delle Politiche Sociali, *Nota del Ministero del Lavoro e delle Politiche Sociali*, 14 January 2011, p3-5.

<sup>166</sup> IOM, "*Stagione amara*": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p6.

<sup>167</sup> ReteRadici and Fondazione Integrazione, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2011-2012*, July 2012, p.56.

<sup>168</sup> IOM, "*Stagione amara*": *Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p6.

<sup>169</sup> For example: Amnesty International's interview with "Mithu" (not his real name) an Indian migrant worker, Latina area, 18 June 2012.

<sup>170</sup> Amnesty International's interview with "Bunty" (not his real name), Indian migrant worker, Borgo Hermada, 19 June 2012.

<sup>171</sup> Amnesty International's interview with "Monu" (not his real name), Indian migrant worker, Latina area, 22 June 2012.

<sup>172</sup> Amnesty international's interview with an Indian migrant worker who preferred to stay anonymous,

Bella Farnia, June 2012.

<sup>173</sup> ILO Labour Inspection Convention, 1947 (No. 81), Article 3.

<sup>174</sup> ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129), Article 4.

<sup>175</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, *General Survey on Labour Inspection*, published 95<sup>th</sup> ILC session (2006), par78.

<sup>176</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Direct Request concerning the Labour Inspection Convention, 1947 (No. 81): Italy, adopted 2004, published 93<sup>rd</sup> ILC session (2005).

<sup>177</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, *General Survey on Labour Inspection*, published 95<sup>th</sup> ILC session (2006), par78.

<sup>178</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, *General Survey on Labour Inspection*, published 95<sup>th</sup> ILC session (2006), par78.

<sup>179</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Observation concerning Labour Inspection Convention, 1947 (No. 81): Italy, adopted 2007, published 97<sup>th</sup> ILC session (2008).

<sup>180</sup> This is reflected in official statistics: according to the Italian government, in 2011 more than 164 thousand workers have been found to be unregistered, "of which 2,095 were foreigners in an irregular residence position". Ministry of Labour and Social Policy, *Analisi di impatto della regolamentazione (AIR)*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE, submitted to the Senate on 17 April 2012.

<sup>181</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Observation concerning Labour Inspection Convention, 1947 (No. 81): Italy, adopted 2009, published 99<sup>th</sup> ILC session (2010).

<sup>182</sup> This residence permit, valid for six months and renewable, allows access to assistance services, education or employment. Article 18.1, Legislative Decree no. 286 of 25 July 1998.

<sup>183</sup> Ministero dell'Interno, Circolare, 4 August 2007.

<sup>184</sup> *Relazione tecnica*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012.

<sup>185</sup> Francesco Carchedi (ed.), *Schiavitù di ritorno: Il fenomeno del lavoro gravemente sfruttato*, Maggioli Editore, 2010, p222.

<sup>186</sup> Research shows that anti-trafficking initiatives in Italy are still mostly limited to trafficking for sexual exploitation. Francesca Mascellini, "La tratta degli esseri umani e le azioni di contrasto" in Caritas/Migrantes, *Dossier Statistico Immigrazione 2011: 21mo Rapporto* (Roma: IDOS Edizioni, 2011) p150.

<sup>187</sup> ReteRadici, *Dossier Radici/Rosarno: monitoraggio autunno-inverno 2010/11*, April 2011, p112.

<sup>188</sup> CEDAW, Concluding observations: Italy, UN Doc. CEDAW/C/ITA/CO/6, 26 July 2011, par28. The UN Committee on the Elimination of Discrimination against Women is a treaty body established under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to supervise compliance with and implementation of the Convention by state parties.

<sup>189</sup> Associazione "Comitato per il Centro Sociale", *Osservazioni e proposte emendative relativamente allo schema di decreto legislativo recante attuazione della direttiva 2009/52/CE*, 21 May 2012, p1.

<sup>190</sup> Article 603-bis of the Criminal Code, introduced by Article 12, Law No. 148, 14 September 2011, "Other urgent measures for financial stabilization and development" (translation by Amnesty International). The crime is punished with detention from five to eight years and with a fee ranging from 1,000 to 2,000 euros for each of the workers recruited.

<sup>191</sup> David Mancini, "La tutela dal grave sfruttamento lavorativo ed il nuovo articolo 603bis c.p.", *Altalex*, 26 September 2011 <http://www.altalex.com/index.php?idnot=15569>

<sup>192</sup> Associazione "Comitato per il Centro Sociale", *Osservazioni e proposte emendative relativamente allo schema di decreto legislativo recante attuazione della direttiva 2009/52/CE*, 21 May 2012, p3.

<sup>193</sup> Bill concerning measures to combat the exploitation of foreign workers, adopted by the Council of Ministers on 17 November 2006.

<sup>194</sup> Art. 1.1, Legislative decree No. 109 of 16 July 2012, Transposition of the Directive 2009/52/CE ("Rosarno Law"), implementing the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals..

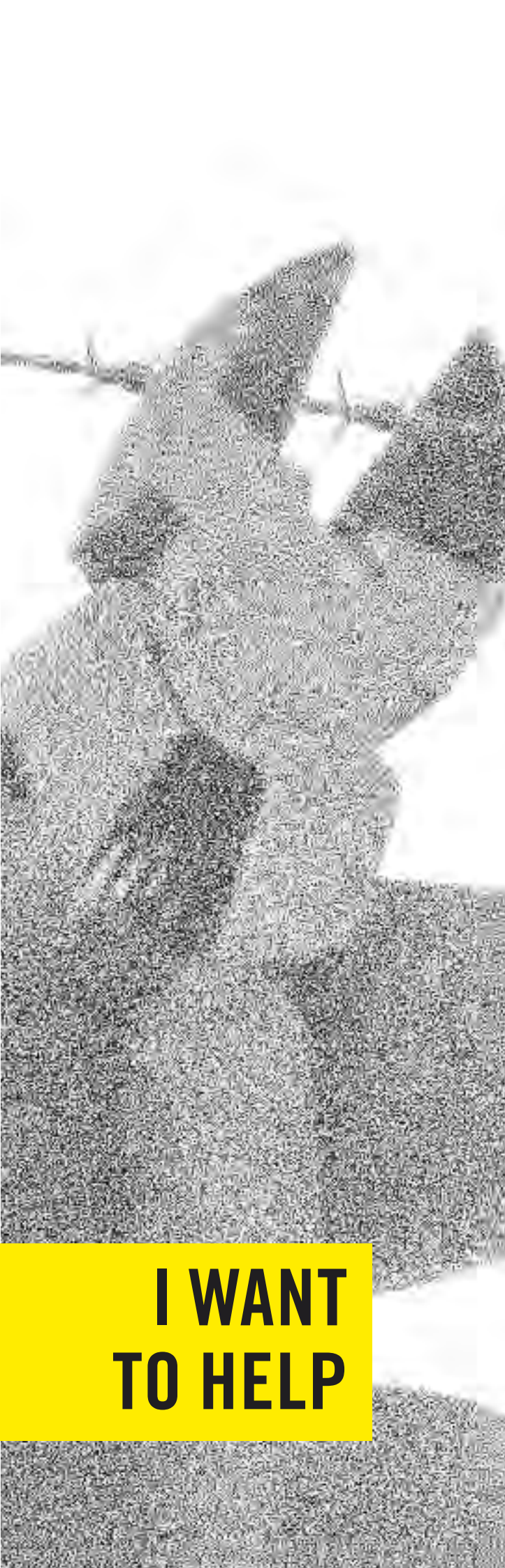
<sup>195</sup> Art. 1.1, Legislative decree No. 109 of 16 July 2012, Transposition of the Directive 2009/52/CE ("Rosarno Law"), introducing Art. 22.12-quater of the Consolidated Law on Immigration.

<sup>196</sup> *Relazione tecnica*, annexed to the Draft Legislative Decree implementing Directive 2009/52/CE submitted to the Senate on 17 April 2012.

<sup>197</sup> Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para48.

<sup>198</sup> For more extensive comments on this point see: ASGI, *Osservazioni allo schema di Decreto Legislativo recante attuazione della Direttiva 2009/52/CE che introduce norme minime relative a sanzioni e a provvedimenti nei confronti di datori di lavoro che impiegano cittadini di paesi terzi il cui soggiorno è irregolare*, 14 May 2012, p3.

<sup>199</sup> IOM, *"Stagione amara": Rapporto sul sistema di ingresso per lavoro stagionale e sulle condizioni dei migranti impiegati in agricoltura in Campania, Puglia e Sicilia*, December 2010, p7.



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## **EXPLOITED LABOUR**

### **MIGRANT WORKERS IN ITALY'S AGRICULTURAL SECTOR**

The agricultural sector in Italy is heavily reliant on migrant workers. According to official data, migrant workers provide nearly a quarter of the days worked overall in this sector. The real figure is probably significantly higher. However, some migrant workers are paid as little as €25 for a day's work and live in derelict buildings and makeshift shelters without running water, electricity or heating.

This report focuses on the violation of labour rights of migrant workers in the areas of Latina and Caserta. It documents widespread labour exploitation, including wages below minimum standards, arbitrary reductions, delays or non-payment of wages and long hours of work.

Amnesty International demonstrates that Italian migration policy increases the vulnerability of migrant workers, especially irregular migrants, to labour exploitation. At the same time, Italian legislation creates obstacles to access to justice for migrant workers and offers them inadequate protection. Amnesty International urges the Italian government to revise its migration policy and legislation to ensure that the rights of all workers are fulfilled, respected, protected and promoted.

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