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GRUPOS E INDIVIDUOS ESPECÍFICOS: TRABAJADORES MIGRANTES

**Nota verbal de fecha 16 de marzo de 2005 dirigida a la Oficina del Alto
Comisionado de las Naciones Unidas para los Derechos Humanos
por la Misión Permanente de Italia ante la Oficina de
las Naciones Unidas en Ginebra**

La Misión Permanente de Italia ante la Oficina de las Naciones Unidas en Ginebra saluda atentamente a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y tiene el honor de proporcionar las observaciones* formuladas por el Gobierno de Italia sobre el informe de la Relatora Especial sobre los derechos humanos de los migrantes, Gabriela Rodríguez Pizarro, tras su visita a Italia. La Misión Permanente de Italia solicita a la Oficina del Alto Comisionado tenga a bien hacerlas distribuir como documento oficial de la Comisión de Derechos Humanos (E/CN.4/2005/85/Add.3).

* Se reproduce en el anexo como se recibió, en el idioma original y en inglés únicamente.

Annex

OBSERVATIONS BY ITALY ON THE REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS TO THE SIXTY-FIRST SESSION OF THE COMMISSION ON HUMAN RIGHTS

GENERAL CONSIDERATIONS

The Government of Italy wishes to thank the Special Rapporteur for her expressions of appreciation for the significant efforts it has made in the area of migration, particularly as regards the complex marine rescue activities accomplished every day by units of our police and Navy, which have enabled thousands of human lives to be saved.

The Government of Italy has also noted with satisfaction the appreciation expressed by the Special Rapporteur concerning the following aspects: current domestic legislation for the protection of victims of trafficking; action taken at the international level to establish dialogue with migrants' countries of origin and countries of transit; recent steps taken to regularize the situation of a large number of foreign nationals. It should be pointed out on this last point that this was an ad hoc measure which will not be repeated.

The Government of Italy also thanks the Special Rapporteur for raising a number of issues which she considers critical, and which it has noted.

The Government of Italy wishes, however, to make a general observation, which it deems essential to a correct perception and assessment of the situation in Italy.

Italy, which was once a country of large-scale emigration, has become a country of immigration in the space of a few years. Confronted with a new phenomenon which is steadily growing and raises extremely complex issues, Italy has developed specific immigration legislation since 1990, which was amended at the end of the decade and again in 2002.

This is advanced legislation which focuses particularly on integration and reception, and offers full protection for the rights of migrants, including those who are working in Italy, who enjoy the same conditions as Italian citizens.

This legislation also emphasizes activities to prevent and combat the growing phenomenon of clandestine immigration, with the aim of thwarting the criminal organizations which benefit from illegal trafficking and the exploitation of migrants.

Hence the Government of Italy does not agree with the Special Rapporteur's observations concerning Act No. 189/2002, and cannot accept the assertions - which are quite unsubstantiated - that these provisions would lead to severe restrictions on migrants' rights (para. 79) or might not comply with international rules for the protection of human rights (para. 93).

In this context, the Government of Italy wishes to emphasize that Act No. 189/2002 in fact places employment at the heart of the migration system, as foreigners are authorized to enter Italy and remain there in connection with work. The aim is therefore to integrate aliens into the world of work and into Italian society.

The Government of Italy also wishes to add that it is precisely the full application of Act No. 189/2002, with the entry into force of the related regulations, which is making it possible to resolve a number of problems highlighted by the Special Rapporteur.

SPECIFIC CONSIDERATIONS

Paragraph 12

The regulations to give effect to Act No. 189/2002 have been approved and entered into force on 25 February 2005 (DPR 334 of 18 October 2004). Act No. 271 dates from 12 November 2004. It contains amendments to the wording of articles 13 and 14 of the Consolidated Text in compliance with Constitutional Court judgements Nos. 222 and 223 of July 2004.

Paragraph 23

The report mentions the expulsion of foreigners discovered in airports with false papers, whereas in such cases recourse is had to refoulement, for which article 2, paragraph 7 of the Consolidated Text on immigration imposes no obligation to inform the consular authorities of the foreigner's country of origin.

Paragraph 26

The decree of 16 October 2004 issued by the President of the Council of Ministers authorized entry by 16,000 additional workers from the eight new member States.

Paragraph 27

In line 6, it should be pointed out that the employer does not request a visa, but a work permit.

Paragraph 34

In the first line, the word "illegal" should be replaced by "illegally present in the national territory".

Paragraph 36

In relation to the remarks attributed to trade unions and non-governmental organizations, it should be pointed out that flexibility in labour relations should not be interpreted as meaning less security of employment or less protection for workers. Hence it is inaccurate to refer to the difficulties encountered by migrant workers in maintaining a stable work relationship as being the result of reform of the labour market.

Paragraph 38

Operational solutions are being studied with the aim of cutting delays in the issue and renewal of residence permits.

Paragraph 42

It should be pointed out that access to Italian universities is guaranteed to all foreigners living abroad who hold the required certificate of studies and possess adequate resources for their subsistence, in accordance with the conditions set each year by the Ministry of Education, Universities and Research and the Ministry of Foreign Affairs. For foreigners who are already in Italy, access to universities is guaranteed on the same footing as for Italian citizens:

- (a) For reasons of work on assignment or independent work, for family or religious reasons or on grounds of political asylum or humanitarian protection;
- (b) For foreigners who have been in Italy for at least one year and hold a certificate of secondary studies obtained in Italy;
- (c) For foreigners, irrespective of their place of residence, who hold certificates of secondary studies issued by Italian schools abroad or by foreign schools in Italy.

Paragraph 46

In relation to item (b), it should be pointed out that children under 18 (and spouses) are automatically considered to be under the responsibility of the person applying for family reunification.

Paragraph 47

The word “detention” used in the title of section D is inappropriate to describe the various cases outlined in paragraphs 47 to 65.

Paragraph 53

In response to the Rapporteur’s observations concerning the absence of any nationals from outside the European Union in the Lampedusa centre at the time of her visit, it should be pointed out that the centre is entrusted with “first aid and assistance” (DPR 394/1994, art. 23) to nationals from outside the European Union who land on the island, and is therefore fully operational only during the short period which elapses between the arrival of the illegal immigrants on the island and their transfer by boat or aircraft to other centres, in Sicily or on the mainland. Obviously, this immediate aid and triage are designed to prevent overcrowding among the users of the centre, which would cause distinct discomfort for the individuals concerned, and to enable the inhabitants of Lampedusa to pursue their daily activities unhindered.

Paragraph 54

Concerning the criticisms set out in the report on the location of the Lampedusa centre, the relevant department of the Ministry of the Interior has worked hard to identify a new site for the centre, as it is fully aware of the logistical difficulties generated by the present site. However, this effort, which was carried out with due concern for the prerogatives of the local authorities, has, as in similar situations, encountered major difficulties of a social and political nature, which also prevented the construction of a new centre at Poggio Monaco, despite the fact that a contract had been concluded with the successful bidder, which had already embarked on preparing the structural elements. Administrative procedures involving the Ministry of Defence are now entering the final phase with the acquisition of the area containing the Adorno army barracks, the aim being to build a more appropriate structure from the logistical standpoint with a larger capacity; the present structure is scheduled to be abandoned.

Paragraph 57

Concerning the issue of the renewal of the agreement with Médecins sans Frontières relating to medical assistance in the Lampedusa centre, it should be pointed out that, under the agreement for the management of the Lampedusa centre between the Prefect of Agrigento, who bears responsibility at the local level, and the Cofradía de la Misericordia, professionals using appropriate medical equipment will provide medical assistance to the users of the centre. However, in order to provide more effective medical assistance to illegal immigrants arriving on the coast of Sicily, the relevant department of the Ministry of the Interior has encouraged the Prefect of Agrigento, the Cofradía de la Misericordia and Médecins sans Frontières to sign a protocol for effective and synergistic coordination of medical assistance provided during the critical phase of landing on Italian soil.

Paragraph 60

Concerning the establishment of identification centres, the implementing regulations have been issued and the procedures for the activation of these facilities are under way. It should be pointed out that, for the establishment of the centres, the regulations provide for the adoption of a decree by the Minister of the Interior, on the advice of the region in question and the joint State-region-communes conference.

The reference in the report to the “Salinagrande” centre is probably the result of a terminological misunderstanding. The Trapani facility is an assistance and rescue centre set up under Act No. 563/1995, which authorizes the Ministry of the Interior to assist foreigners at risk who have reached Italy, or who have been identified as being in the country unlawfully, for as long as is strictly necessary for them to be expelled or identified. This explains the reference in paragraph 61 to the presence of illegal immigrants and asylum-seekers in this facility.

Paragraph 66

Permits are granted on social welfare grounds, and also in the light of the importance of cooperation provided from abroad in combating criminal organizations and identifying or apprehending those responsible.

Paragraph 72

Consideration of applications for asylum is currently the responsibility of the Central Commission for the Recognition of Refugee Status.

Act No. 189/2002 entrusts this function to the commissions in each area, while the main functions of the National Commission for the Right of Asylum are coordination and guidance. The area commissions include a representative of the Office of the United Nations High Commissioner for Refugees as a full member, with the right to vote.

The reform is also designed to speed up procedures for the consideration and resolution of applications for granting of refugee status, in keeping with the Geneva Convention. This system will enter into operation on 21 April 2005.

Recommendations to the Prefect of Police for the granting of humanitarian protection are independent of the lodging of appeals against refusals to grant refugee status.

Paragraph 78

This paragraph seems to contradict what was said in paragraph 76, which correctly indicates that unaccompanied minors, whether Italian or foreign, are under the protection of the Juvenile Court and are assisted by local authorities. Paragraph 78 cites the cases of unaccompanied minors who have been refused asylum and who are living in Stazione Tiburtina. It should be pointed out in this regard that unaccompanied minors cannot be expelled, even if they are asylum-seekers whose applications have been refused, and continue to benefit from the local authority assistance referred to in paragraph 76. The situation described in paragraph 78 probably relates to minors who have improperly left the facilities in which they were being assisted following a decision of the Juvenile Court.

CONSIDERATIONS RELATING TO THE CONCLUSIONS AND RECOMMENDATIONS

Paragraph 79

Reference is made to the general considerations above.

Paragraph 80

We cannot accept the assertion that the underground economy is the main cause of illegal immigration, which places responsibility for this phenomenon on the country of destination. In this regard, it should be pointed out that in recent years the Government of Italy has launched a resolute policy to combat moonlighting. Regularization of the situation under Act No. 189/2002 was designed to remove foreign workers from unlawful situations.

It should be added that the reform of the labour inspectorates under legislative decree No. 124 of 23 April 2004 led to reorganization and strengthening of monitoring activities, by focusing on initiatives for combating unrecorded employment. A central coordinating commission is responsible for identifying strategic orientations and objectives, as well as the priorities to be followed by all the agencies involved in combating unrecorded

employment throughout Italy. In particular, the Ministry of Labour and Social Policies, alongside the ordinary activities carried out by its offices throughout the country with other agencies and bodies that have responsibilities in this area, has recently set up a special department to coordinate inspection activities nationwide. In this context, it is planned to establish a group of experts from the Ministry of Labour, the National Social Insurance Institute and the insurance institute for occupational accidents and illnesses, who will pursue a single operational approach throughout the country as part of activities involving prevention and promotion of respect for social and labour legislation.

It should also be emphasized that the nature and scale of the phenomenon of migration in Italy are profoundly influenced - as the report notes - by its geographical position, which exposes the country to movements from all over the Mediterranean basin, and also by its membership of the European Union and the Schengen area.

Paragraph 81

We note with satisfaction the appreciation expressed by the Special Rapporteur regarding the efforts being made by the Italian Government to establish closer relations with countries of origin and transit.

In this regard, it is necessary to point out the following. First, the large number (29) of bilateral readmission agreements which Italy has concluded make it possible for foreigners found to be illegally in the country to be repatriated in concert with their countries of origin. Second, the bilateral employment agreements which have been concluded or are being negotiated with a variety of countries in which migratory flows originate (Republic of Moldova, Romania, Morocco and Egypt), as well as the pilot overseas selection and training projects being promoted by the Ministry of Labour in Tunisia, Sri Lanka and the Republic of Moldova, are aimed at initiating cooperation with the authorities in countries of origin which may test machinery for matching job vacancies and job seekers, improving knowledge of professional needs and profiles, and buttressing legal means of entering Italy. Cooperation with countries in which migratory flows originate is a basic tool for training foreign workers who are ready to emigrate and fitting them to the requirements of the Italian labour market, as well as for combating illegal immigration.

Paragraph 82

As already mentioned, operational solutions are being studied with the aim of cutting delays in the issue and renewal of residence permits.

Paragraph 83

The observations made concerning paragraph 36 also apply to the assertion that there is a lack of coordination between employment policy, which is tending to cut down on indefinite contracts, and current policy on migrant workers, which requires workers to provide proof of employment over time. Flexibility in labour relations should not be confused with less security of employment or less protection for workers. Hence it is inappropriate to refer to the difficulties encountered by migrant workers in establishing or maintaining a stable work relationship following reform of the labour market.

Most foreign workers in Italy work as domestic employees or personal assistants, or find work in industry, tourism, farming or construction.

In these sectors, entry into the Italian labour market is effected on the basis of a fixed-term or indefinite contract concluded in accordance with the law and the appropriate collective agreement, which is the same as that which applies to Italian workers. Consequently, the various types of flexible and occasional work referred to in the recent legislation on the labour market are not very common in the main sectors which employ foreigners. Indeed, these types of work are designed to ensure and promote regular and stable employment and to provide effective protection in order to rapidly increase the number of persons working regularly.

Among the new forms and types of work relationship, with the safeguards stipulated in the law, some may be appropriate to the circumstances of migrant workers and could reduce the uncertainty associated with stable employment and renewal of the residence permit.

In this regard, mention should be made of occasional and incidental work as mentioned in articles 70-74 of legislative decree No. 276/2003, which may be performed by, inter alia, workers from outside the European Union who hold a regular residence permit, within a period of six months following loss of employment:

- Small household jobs of an exceptional nature, including domestic help to children, the elderly, the sick or the disabled;
- Extra private tuition;
- Casual work in gardening, cleaning and maintenance of buildings and monuments;
- Organization of social, sports, cultural and charitable events;
- Cooperation with public bodies and voluntary associations in organizing emergency activities, for example in response to natural disasters, or support activities.

Paragraphs 84 and 85

Reference is made to the general considerations above.

Paragraph 86

Concerning the observations in the report on the private management of the temporary stay centres, it should be pointed out that the practice of private negotiation of agreements with the agencies responsible for management of the temporary stay centres is expressly provided for in the civil protection ordinances relating to the provisions adopted to combat the emergency arising from foreign immigration in Italy. Moreover, the appropriate department in the Ministry of the Interior drafted special guidelines, which were approved by ministerial directive on 8 January 2003, setting out the essential criteria and management principles which must be applied by all agencies located in Italy which hold or accept nationals from outside the European Union. The purpose of this legislation is to ensure maximum transparency and objectivity in assigning management functions to non-profit-making and other organizations and associations with excellent professional skills, a mandate and experience in the field of social

assistance to the least well off. Adoption of these guidelines also makes it possible to identify parameters applicable to services provided to foreigners which are uniform for the whole of the country and can be objectively measured, so that the quality of such services can be raised and standardized.

Concerning the assertion in the report that the temporary stay centres do not provide a solution to illegal immigration, it is necessary to point out the following. These centres were set up under article 14 of Consolidated Text No. 286/98 of the immigration laws, as amended by article 13 of Act No. 189/2002, with the specific purpose of holding persons subject to expulsion measures until such time as bureaucratic formalities have been completed and the legal position verified, in a special facility, in a manner consistent with all the individual's fundamental rights (except, of course, for the right to leave), while at the same time preventing the person from continuing to travel within Italy, which would entail serious risks for public order and security. This legislative instrument has, moreover, been found to be compatible with the Constitution by the Supreme Court in judgement No. 105 of 2001, as implicitly reaffirmed in recent judgements Nos. 222 and 223 of 15 July 2004.

Paragraph 87

Reference is made to the observations on paragraph 54 in connection with the Lampedusa centre.

Paragraph 88

Regarding delays in processing applications for recognition of refugee status, please see the observations on paragraph 72.

Paragraph 90

Reference is made to the general considerations above.

Paragraph 93

Reference is made to the general considerations above.

Paragraph 97

The final establishment of the regulatory framework under Act No. 189/2002, with the approval of the related implementing regulations, will ensure, in addition to the effective introduction of a number of measures provided for in the Act, including the system of priority linked to overseas training mentioned in paragraph 32 of the report, a shift to ordinary programming of entry quotas for employment purposes. However, it should be emphasized that the transitional nature of the programming in recent years does not mean that information relating to labour market requirements has not been taken into account. For the year 2005, two decrees issued by the President of the Council of Ministers authorized the entry of 500 nationals of countries outside the European Union and 79,500 from the new member States.

Paragraph 103

The implementing regulations for Act No. 189/2002 were published in the *Gazzetta Ufficiale* of 10 February 2005, and entered into force on 25 February 2005.

Paragraph 106

It should be pointed out that the limited access to alternatives to prison such as day release is due to the fact that most of the detainees from outside the European Union are illegal immigrants. This prevents the prison inspection judge from granting these terms because these foreigners do not meet one or more of the conditions stipulated in the law (such as lack of domicile or of a contract of employment). In contrast, the various options offered by the Italian prison system (academic and vocational classes, for example) are neither forbidden nor restricted for foreign detainees.

Paragraph 108

A bill on the right of asylum is before Parliament. The issue of delays in processing requests was referred to under paragraphs 72 and 88.

Paragraph 112

In accordance with the programme document on immigration policy, which provides for the intervention of the cultural mediator in order to remove barriers preventing immigrants from benefiting from the services available, the Ministry of Labour and Social Policies has launched several initiatives in the field of cultural mediation in recent years, including the promotion of linguistic and cultural mediation projects in schools and welfare and health institutions, in the security forces and as a back-up to the functions of the provincial labour departments.
