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Italian Experiences in Combating Hate Crimes and Hate Speech in Light of Recent Violence by and Against Roma**

Abstract. This paper provides an overview of national efforts to combat racism, xenophobia and intolerance in the Italian legal framework. It looks specifically at Law n. 94/2009 on public security and its compliance with European and international legal standards. Specifically, the study is devoted to the key issue of the different treatment of Roma and Sinti in Italy due to their legal status.

Keywords: xenophobia; racism; human rights; Roma; Sinti; Law n. 94/2009 on public security; European law; international law

1. Introduction

Public opinion regarding the presence of immigrants in the country has recently been fed with media reports on atrocious crimes committed by foreigners, exacerbating feelings of insecurity, fear, and even xenophobia among Italians.¹ Recently, Italy registered several episodes of xenophobia and racism: in January 2010 a racist attack on African migrant workers in the Southern region of Calabria by local gangs brought to the surface the Italian society tensions that had been simmering for some time. It's an issue of strict actuality because Italy has one of the fastest growing immigrant populations in Europe, with immigrants now reaching about 7 percent of the population.²

The EU Special Barometer of July 2009 reported that Italy scored some of the lowest results among the EU member States, as regards “the level of comfort with person from different ethnic origin as a neighbour and especially as regards the comfort with Roma neighbour”.

Another special country-based survey of the same EU institution reported a higher than the EU average (76% and 62% respectively) percentage of interviewees in Italy who thought that discrimination on the basis of ethnic origin was “very or fairly widespread”.

Apart the issue of racial discrimination and xenophobia against immigrants, there is the problem of Roma and Sinti in Italy.³ Usually known as Gypsies (a misnomer, derived

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¹ See Beutin, R. et al.: Reassessing the Link between Public Perception and Migration Policy. *European Journal of Migration and Law*, 9 (2007) 4, 389–418.

² See Caritas Europe: Annual Activity Report Edition, 2009.

³ In this paper we will use the term Roma and Sinti—instead of “nomads” as these people are often quoted in Italian documents—in line with UN and OSCE language. The terms “Roma” and “Sinti” are authentic proper names meaning “person”. Those of eastern European descent are called “Roma” and those of central European origin are referred to as “Sinti”. On the other hand, the foreign term “gypsy” is regarded by most minority members as discriminatory. For further reading see Fraser,

from an early legend about Egyptian origins) defy the conventional definition of a population: they have no nation-state, speak different languages, belong to many religions and comprise a mosaic of socially and culturally divergent groups separated by strict rules of endogamy.

Their total amount is 150,000. They include (i) Italian citizens, as well as citizens of both (ii) EU and (iii) non-EU countries. Groups of Roma and Sinti migrated to Italy during different periods, beginning in the 14th century. In the 1980s and 1990s, the conflicts in the former Yugoslavia caused Roma to flee to other countries, including Italy. In the 1990s and the first decade of this century, a large number of Roma arrived from the States of Central and Eastern Europe. The most recent influx of Roma and Sinti communities has come mainly from Romania: these movements intensified since Romania joined the EU in 2007.⁴

In the Italian legislation, nomads are not considered as a minority group and their legal status differs: after Romania's accession to the EU in January 2007, the Romanian Roma became EU citizens and gained the right to free movement within the European Union, while Roma from Western Balkans are non-EU nationals. Many of them have no documents providing their identity or places of origin rendering them *de facto* stateless (with particular negative consequences for children). They are technically subject to Italian immigration legislation.⁵

Although they do not have a large presence in Italy, Romanian Roma migrants have attracted considerable public attention and negative media coverage, due to growing prejudice and the link between Roma and Sinti migrants, criminality and threats to public security. In November 2007, the murder of an Italian woman, by a Romanian Roma, was highly publicized on the Italian media and led to a series of attacks on Roma, culminating in a mob burning down a Roma settlement in Ponticelli (in the suburbs of Naples) in May 2008 after a young Roma woman living in the settlement was accused of kidnapping a baby from a local couple. The Italian government responded to these events introducing a number of measures affecting specifically the Roma and Sinti population in Italy.

2. The Italian response to violence committed by Roma

Since May 2008, a number of government decisions have been issued concerning the Roma and Sinti communities, or "nomads", as they are commonly referred to in Italy. The Prime Minister issued a decree declaring a "state of emergency" in relation to settlements of

A. M.: *The Gypsies*. Oxford, 1995; Hancock, I.: *Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond*. In Crowe, D. M.–Kolsti, J. (eds): *The Gypsies of Eastern Europe*. Armonk (NY), 1991; Kalaydjieva, L. et al.: *A newly discovered founder population: the Roma/Gypsies*. *Bioessays*, 27 (2005) 10, 1084–1094; Liegeois, J. P.: *Roma/Gypsies: A European Minority*. London, 1995.

⁴ See Ban, C.: *Economic Transnationalism and its Ambiguities: The Case of Romanian Migration to Italy*. *International Migration*, September 2009.

⁵ The Committee on the Elimination of Racial Discrimination (CERD), after examining the periodical report submitted by Italy according to Art. 9 of the UN Convention on the Elimination of all Forms of Racial Discrimination of 1965, *warned the Italian institutions that they must recognise the Roma as an official minority and adopt policies aimed at addressing their needs*. The CERD "recalling its general recommendation N° 27 on discrimination against Roma, recommends that the State Party adopt and implement a comprehensive national policy as well as legislation regarding Roma and Sinti with a view to recognizing them as a national minority and protecting and promoting their languages and culture" (para. 12).

“nomad” communities in some regions⁶ (measure based on Law n. 225/1992 which deals with emergency situations arising from severe natural disasters⁷) and three “ordinances” introducing special and exceptional measures concerning “nomad settlements” in the some regions. The state of emergency lasted until 31 May 2009. Following this decree, the prime minister issued on 30 May 2008 three ‘ordinances’ introducing special and exceptional measures concerning ‘nomad settlements’ in the regions of Campania, Lazio and Lombardia and which appointed the prefects of Rome, Milan and Naples as ‘delegated commissioners’ with powers to carry out ‘all the interventions needed to overcome the state of emergency’ in relation to Roma and Sinti settlements in those regions.⁸ Their specific powers include the monitoring of formal and informal camps, identification and census of the people, including minors, who are present there, the expulsion and removal of persons with irregular status, measures aimed at clearing “camps for nomads” and evicting their inhabitants; as well as the opening of new “camps for nomads”.

The government stated that the Ordinances were adopted in order to speed up the administrative procedures, including agreements to build new camps as well as to identify the due additional economic resources from within the State’s Budget, in order to grant *ad hoc* reception measures, build new structures and improve those already existing. The Ordinances also entail specific support measures to promote the integration of people in the settlements through comprehensive projects having an integrated nature aimed at facilitating the school enrolment and the search for employment.

Following the issuing of the ordinances, the authorities initiated a census including the collection and use of personal data of nomads (fingerprints of minors).⁹ These measures were justified as being necessary to provide support to individuals in camps and to prevent further degradation of their living conditions, as well as to identify people involved in criminal activities. With regard to minors involved in begging and stealing, the stated aim was to identify them and those forcing them into criminal activities. Once such data are collected, the plan was to dismantle criminal networks, put a stop to exploitation of children, assist children with their school registration, and provide them with adequate health care. Harsh criticisms to these policies adopted and implemented by the Italian Government have

⁶ Italy, Decree of the President of the Council of Ministers (21/05/2008). “Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia” [Decree of the President of the Council of Ministers of 21 May 2008. Declaration of a state of emergency in relation to settlements of nomad communities in the territory of the regions of Campania, Lazio and Lombardia]. Published in the *Official Gazette* No 122 of 26 May 2009.

⁷ Law no. 225 of 24 February 1992, “Institution of the National service of the civil protection”.

⁸ ‘Disposizioni urgenti di protezione civile per fronteggiare lo stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio della regione Lazio, della regione Lombardia e della regione Campania’ [*Urgent provisions of civil protection in order to face the state of emergency in relation to settlements of nomad communities for the regions of Campania*] (Ordinance No. 3678).

⁹ The special Commissioners are allowed to derogate from a number of laws concerning a wide spectrum of issues affecting constitutional prerogatives, for instance the right to be informed when subjected to administrative procedures such as photographing, fingerprinting or the gathering of anthropometric data.

been made at European level.¹⁰ In particular, some scholars argued a violation of Article 6 paragraph 1 of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,¹¹ which states: "Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, *may not be processed automatically unless domestic law provides appropriate safeguards*. The same shall apply to personal data relating to criminal convictions." The Ordinances would not provide the "appropriate safeguards" requested by the Framework Convention.

On 17 July 2008, the Ministry of Interior issued specific guidelines concerning the application of the orders on "emergency" concerning nomads' camps. The aim of these guidelines is to end the situation of degradation and make conditions liveable for those Roma and Sinti communities living in authorized or illegal settlements by providing humanitarian assistance, improving their access to health care, education and social assistance (with particular emphasis to children and schooling).

The Police conducted forced evictions and dismantling of several illegal camps that caused high rates of criminality in the surrounding areas. The Mayor of Rome, in accordance with the Plan for Nomads issued in 2009 (relocation of many camps realized by settling the people concerned into "authorized villages"¹²) proceeded on 15 February 2010 to the definitive closure of the Nomad Camp Casilino 900.

3. The Italian Legal Framework

The principle of non-discrimination is one of the main pillars of the Italian Constitution (Art. 3) upon which the domestic legislative system is based and enforced, particularly by the domestic Courts.¹³ The presence of this article in the Constitution gives equality and

¹⁰ Office for Democratic Institution and Human Rights, High Commissioner on National Minorities, Assessment of the human rights situation of Roma and Sinti in Italy, Report of fact-finding mission to Milan, Naples and Rome on 20–26 July 2008, 7.

¹¹ CETS No.: 108. The Convention was opened for signature in Strasbourg on 28 January 1981 and entered into force on 1 October 1985. Italy ratified the Convention with Law 21 febbraio 1989, n. 98, published in the Official Gazette *n. 066 SUPPL. ORD. of 20 March 1989*.

¹² Vitale, T.: *Politique des évictions. Une approche pragmatique*. In: Cantelli, F.–Pattaroni, L.–Roca, M.–Stavo-Debaugé, J. (sous la direction de): *Sensibilités pragmatiques. Enquête sur l'action publique*. Bruxelles, 2009, 71–92.

¹³ The principle of equality and non-discrimination is included in all human rights treaties and declarations. Non-discrimination is both a human right of its own and a constitutive element of all human rights. Non-discrimination rules are to be found at international, supranational (EU) and national level. The United Nations (UN), which was created in the aftermath of the horrors of racism, fascism and National Socialism, has since its very beginning placed the battle against discrimination in the forefront of its human rights activities. Indeed, one of the purposes of the UN, as they are enunciated in the UN Charter, is to promote and encourage the respect for human rights and fundamental freedoms for all "without distinction as to race, sex, language, or religion". By now, the principle of non-discrimination has undoubtedly acquired the status of a fundamental rule of international human rights law. It has been expressly included in most international human rights documents and is implicitly embedded in almost all individual human rights provisions, which are usually worded in universal language, such as "everyone has the right to education" or "no one shall be subjected to arbitrary arrest, detention or exile". It is widely held that the principle of non-discrimination is a principle of customary international law and, at least as regards discrimination on

non-discrimination principles the status of paramount values. Moreover Art. 3 provides a benchmark against which subsequent national and regional laws and regulations can be evaluated when the suspicion of discriminatory provisions exists. In this field, the action of judges is important, as on the basis of this national legislation has to be interpreted and can even be declared unconstitutional and disapplied.

The Criminal Code of Italy contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. In particular, Section 3(1)(b) of Law 654/1975, as amended by Section 3 of the Law 205/1993 (which defines racial discrimination as both a crime in itself and as an aggravating factor in other criminal acts) introduces a general aggravating circumstance for all offences committed with a view to discrimination on racial, ethnic, national or religious ground or in order to help organizations with such purposes.

The Italian legal framework against racial discrimination has been reinforced by Legislative Decree No. 215 of 9 July 2003 which foreseen the creation of the National Office Against Racial Discrimination (UNAR). UNAR was established by Decree of the President of Council of Ministers (PCM) of 11 December 2003,¹⁴ in accordance with Art. 13 of Council Directive 2000/43/EC enshrining the principle of equal treatment of all people regardless of their race or ethnic origin.¹⁵

UNAR carries out in an autonomous and independent way activity of promotion against any form of racism and intolerance. In particular, it provides judicial assistance, it carries out inquiries and it disseminates informations and knowledge on this topic. UNAR promoted the establishment of Agreement Protocols with lawyers' associations available to offer pro-bono juridical assistance to alleged victims of racial or ethnic discrimination.

Very important in this context is the adoption of Law n. 101 of 6 June 2008 which provides for an explicit shift of the burden of proof from the complainant to the respondent (in civil and administrative law) in cases of "prima facie discrimination".

4. Law n. 94/2009 on Public Security

Recently, Law N° 94 of 15 July 2009 titled "Regulations about public security", presents considerable amendments in matters concerning immigration.¹⁶ The most important amendment is the introduction of the new crime of "illegal entry and sojourn in the territory of the State" (Article 1, subpara. 16), entrusted to the competence of the Justice of Peace, which punishes the behaviour of a foreigner who enters or remains in the State, infringing

the basis of sex, race and ethnic origin, that it also has a status of *jus cogens*. See Fredman, S.: *Human Rights Transformed: Positive Rights and Positive Duties*. Oxford, 2008, 175–180; Janis, M. W.: *International Law*. New York, 2009, 65–67.

¹⁴ Italy / Decreto del Presidente del Consiglio dei Ministri (11.12.2003).

¹⁵ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin–June, 29th 2000. O.J. L 180, 19 July 2000, 22–26. Article 19 of the Consolidated Version of the Treaty on the Functioning of the European Union, as amended in Lisbon, provides: "Without prejudice to the provisions of this treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

¹⁶ Published in the Official Journal (*Gazzetta Ufficiale*) no. 170, on 24 July 2009.

the regulations of the consolidating legislation on immigration and Law N° 68/2007 (regarding short-term stays) with a fine.¹⁷

The offence is accompanied by a series of additional sanctions: expulsion, discontinuance of the crime once the “irregular” foreigner is outside Italian territory, the possibility of expelling the “illegal immigrant” even when there is no authorisation. The legal measures contained in this Law with other laws approved by the Italian Government and Parliament in 2008, becomes part of a whole “Security Package”, that is, a group of provisions addressing security concerns and issues with a variety of different legal means. In particular, the provisions of Law no. 94 affect several laws already in effect, amending—among others—the Criminal Code, the Code of Criminal Procedure, the Highway Code, the Immigration Law. Adoption of Law no. 94/2009 represents a comprehensive legal action based on the necessity to deal with relevant—and quite heterogeneous—social issues, furthering protection for the weakest members of society—women and children—the fight against illegal immigration. The Law was supported by 157 votes in favour and 124 against and it was particularly opposed by left-wing parties within the Parliament and heavily criticized by the legal doctrine and the public opinion, due to its alleged discriminatory and racial contents.¹⁸

Among the most important rules introduced by Law no. 94/2009, are worth noting, at the outset, some legal measures against illegal immigrants in the Italian territory whose *rationale* would lie in the enhancement of the fight against illegal immigration. The most relevant measure has been the introduction in the Italian Criminal Code of a provision making illegal immigration a crime. Indeed, Art. 1, s.16, lett. *a*) of Law no. 94/2009 amended Art. 10 *bis* of Legislative Decree 286/1998 (Immigration Law), qualifying as a penal offence—punished with a fine from 5 000 to 10 000 Euros—the entrance and stay in the State territory of a foreign national, performed in violation of the Italian Immigration Law’s provisions on lawful entry and stay requirements. This provision is the most criticized of the whole Law and the Italian Constitutional Court has been already called upon to judge on its constitutionality. Indeed, as of today the Tribunals of Pescara, Torino, Bologna, Agrigento and Trento have challenged the Law before the Constitutional Court claiming a contrast with Art. 10 Cost.—affirming that International Law principles are recognized in the Italian legal system,—since International Law provides that illegal entrance in a State must be subject to administrative sanctions and not criminal ones; with Art. 3 Const.—the equality clause, implying also a principle of reasonableness of the State action—, since Law no. 94/2009 would lack any legal justification, in light of the fact that in the Italian legal system Criminal sanctions must be used only as *extrema ratio*; as far as the equality principle is concerned, the Law would also introduce an unreasonable difference between the treatment of illegal immigrants and of those already living in Italy; with Art. 2 Const., which establishes that Italy must guarantee fundamental human rights.

The newly introduced Art. 61, s.1, num. 11*bis* of the Italian Criminal Code (introduced by Art. 1, s.1, Law no. 94 and applicable to all crimes in the Criminal Code) provides that a sentence will be increased in case a crime is committed by an illegal immigrant on the

¹⁷ For a comment on this Law, see Hammarberg, T.: It is wrong to criminalize migration. *European Journal of Migration and Law*, 11 (2009) 4, 383–385.

¹⁸ For an analysis of the reasons of the outcomes of the Italian mechanisms of immigration controls see Finotelli, C.—Sciortino, G.: The Importance of Being Southern: The Making of Policies of Immigration Control in Italy. *European Journal of Migration and Law*, 11 (2009) 2, 119–138.

Italian soil. This rule applies only with regard to extra EU citizen and stateless people. Other restrictive regulations are provided for those foreigners who want to get married in Italy: indeed, the original formulation of Art. 116 of the Italian Civil Code, titled “Marriage with a foreigner within the State”, requested that the foreigner, who wanted to get married in Italy—irrespective of getting married with an Italian citizen or a foreign national—had to show to the Italian public officer for the registry and marriage office, that no legal obstacles to the marriage were present, and that all other documents and requirements requested also to Italian citizens were present (e.g. publication of the banns). The new text of Art. 116 of the Civil Code, as modified by Art. 1 s.15 of Law no. 94/2009, obliges a foreigner who wants to get married in Italy to both show that no legal obstacles are present, and to provide for a certification demonstrating the legitimacy of his/her presence in the national territory. Moreover, foreign and stateless spouses, applying for Italian citizenship, must show presence on the Italian territory for a period of at least 2 years (by way of difference with the six months’ residence period formerly required) after the marriage. Citizenship will be granted only if the marriage is still valid and the couple is not separated. More restrictive regulations has been set out for special crimes directly affecting a natural person and in particular those affecting women and children. Among the most relevant, it is worth citing the provision qualifying as a crime (and no longer as a mere “offence”) the employment of children for begging, and punishing it with a three years’ imprisonment.

The conviction for this crime, as well as the one for crimes of enslavement, female genital mutilation or sexual assault committed by a parent or by the legal curator, brings with it the automatic loss and the perpetual disqualification from guardianship. The purpose of these provisions is to enhance children’s protection (in particular Roma and Sinti minors) and answer the increasing social concern deriving from crimes committed in schools. The means chosen to answer these concerns are the increase of punishment, provided mainly with the introduction of a common aggravating circumstance (Art. 61, s.1, n. 11^{ter} of the Italian Criminal Code), applicable to those committing a crime against a minor near or inside schools or other educational institutions. The same aggravating circumstance applies also for group sexual assault crimes committed near a school against an adult.

5. Compliance of Italy with Human Rights Standards

Italy is a party to the following international treaties that prohibit racial and ethnic discrimination and set standards for the treatment of aliens, refugees and asylum seekers: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the International Convention on the Rights of Children (CRC) and the Convention relating to the Status of Refugees (“1951 Refugee Convention”).

Italy is not a party to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the European Convention on Nationality and the United Nations 1964 Convention on the Reduction of Statelessness, the three key instruments that protect the rights of migrants and stateless persons.

The CMW, adopted by the UN General Assembly with resolution 45/158 of 18 December 1990 and in force since 1 July 2003, points out that “the human problems involved in migration are even more serious in the case of irregular migration” (Preamble). It therefore encourages “appropriate action... in order to prevent and eliminate clandestine

movements and trafficking in migrant workers” (ib.). It is worth noting that the measures it deems should be taken, within the jurisdiction of each State concerned, are not directed to irregular migrants, but to those who cause the phenomenon. It in fact calls for “appropriate measures against the dissemination of misleading information relating to emigration and immigration” and the imposition of “effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation” (Art. 68). It instead urges signatories to assure the protection of the fundamental human rights of irregular migrants (Preamble). Indeed, it affirms that “every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law” (Art. 24) and that appropriate measures should be taken “to ensure that migrant workers are not deprived of any rights ... by reason of any irregularity in their stay or employment”.¹⁹

The new Italian law, on the contrary, has tightened the norms related to the irregular status of foreigners, and has transformed irregular migration into a criminal offence instead of the administrative breach that it used to be. This change has significant repercussions in the concrete life of the migrant and his family. To start with, it will be difficult for the irregular migrant to find lodging, since whoever rents an apartment to people in his condition runs the risk of imprisonment. It will be difficult if not impossible for him to send remittances back home through money transfer services, since this requires the presentation of a regular permit to stay in the country. This is a serious concern for the welfare of the families who have stayed behind in the home country and also deprives their countries of origin of that income that their poor economies badly need. Law n. 94 does not seem to be “family-friendly”. Since all legal acts regarding the civil status requires the presentation of a regular permit to stay, an irregular migrant cannot be registered as a parent of a child who may even have a legal status in Italy. The child will therefore have to be identified as one with unknown parent.

At regional level, Italy is also a party to the Council of Europe’s Convention on Human Rights and Fundamental Freedoms (ECHR)²⁰ and the European Social Charter, whose

¹⁹ For an overview on the implementation of the Convention see Abimourched, R.–Martin, S.: Migrant Rights: International Law and National Action. *International Migration*, 47 (2009) 5, 115–138.

²⁰ The European Court of Human Rights has recently developed its jurisprudence related to racial discrimination in highly significant ways. The Court has rightly been applauded for abandoning its requirement that racial discrimination be proved “beyond reasonable doubt” and for endorsing the concept of indirect discrimination, allowing it, in the last five years, to begin to find states from “Eastern Europe” in violation of the Convention for having discriminated against especially Roma applicants. While welcome, these new developments should not detract from the need to continue asking difficult questions, including the following: why has it taken decades for the Court to start finding a violation of Article 14 on grounds of race? Why are cases, such as *Menson v. United Kingdom* concerning the slow reaction of the police in investigating the lethal attack of a black man, not found admissible? Can we expect the Court, created in a region which largely built itself upon colonialism, to generate mechanisms fit to tackle racism? In the past, judges themselves have provided the most virulent critique of the Court’s inability to tackle racism. Migrants still remain to benefit from their progressive stance in relation to Article 14 claims based on grounds of race. See Dembour, M.-B.: Still Silencing the Racism Suffered by Migrants. The Limits of Current Developments under Article 14 ECHR. *European Journal of Migration and Law*, 11 (2009) 3, 221–234.

preamble establishes the principle of non-discrimination and whose Art. 19 sets out obligations for the equal treatment of migrant workers.

At European level, Chapter III of the EU Charter on Human Rights (included in the Lisbon Treaty, entered into force on 1 December 2009) is devoted entirely to equality. Italy is likewise bound by European Union Directives, in particular European Union Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the “Racial Equality Directive”) and European Union Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of European Union Member States (the “Freedom of Movement Directive”).²¹

The Directive sets out common standards and procedures in the Member States for returning irregularly staying third country nationals (the Returns Directive). While its impact in terms of harmonising national legal frameworks can be questioned, from the Member States’ point of view the agreed standards will underpin their common efforts at removing a higher number of irregular immigrants. From the point of view of immigrants, it will mean longer pre-removal detention periods and a ban on re-entering legally the Union’s territory for the foreseeable future.²²

The Emergency Measures, described above in paragraph 2, according to some scholars, have led directly to the impermissible discriminatory treatment of Roma and Sinti by: (a) defining the very presence of the Roma and Sinti (called ‘Nomadi’ in the Emergency Measures) as grounds for a state of emergency, creating an intimidating, hostile, degrading environment; (b) directly discriminating against Roma and Sinti by mandating a compulsory census on the basis of their accommodation in camps for nomads created by the government; (c) allowing the creation of an ethnic database of Roma and Sinti without adequate safeguards; (d) allowing unlawful searches of the homes of Roma and Sinti; and (e) permitting destruction of Roma and Sinti settlements and effective evictions without provision for adequate alternate housing.²³

As part of the Emergency Measures, the Italian government has conducted an official census of Roma and Sinti, which has included a collection of fingerprints, photographs, information on ethnic background and religion, and other personal data. This ethnicity-specific census is in direct violation of ICCPR Art. 17 (guaranteeing the right to respect for family life), as well as ICCPR Art. 26 (the right to non-discrimination). Documentation carried out by non-governmental organizations indicate that many Roma and Sinti felt coerced into complying with this census, either because they felt they did not have any other choice, or because police and NGO census takers provided false information about the nature and purpose of the census to Roma and Sinti living in the camps.

²¹ For an overview of EU migration and non-discrimination policy see Peers, S.: Key Legislative Developments on Migration in the European Union. *European Journal of Migration and Law*, 9 (2007) 4, 451–456.

²² See Baldaccini, A.: The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive. *European Journal of Migration and Law*, 11 (2009) 1, 1–17; Acosta, D.: The Good, the Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly? (The Adoption of Directive 2008/15: The Returns Directive). *European Journal of Migration and Law*, 11 (2009) 1, 19–39.

²³ See e.g.: Discrimination against Roma in Italy worries UN rights experts. UN press release, <<http://www.un.org/apps/news/story.asp?NewsID=27373&Cr=Human>>

There are documented cases in which both Italian and non-Italian Roma and Sinti were subjected to the census under explicitly forceful and intimidating circumstances. For example, in the semiformal Camp Tor di Quinto-Baiardo and the formal Camp Tor de Cenci in Rome, where part of the census was conducted in July 2008, officials were reportedly aggressive and violent toward residents, including searching residents' homes using dogs and without a court order. The Italian government has not made clear what it will do with the sensitive information, including fingerprints and information on minors, collected in the database. In the course of implementation of the Emergency Measures, Roma and Sinti communities were subjected to unlawful searches. A number of their settlements were destroyed without advance notice, consultation, or respect for due process of law. The authorities have carried out evictions without providing assurances of adequate alternative accommodations. Several such raids took place in Milan and Turin in 2007. These forced evictions without remedy are in direct violation of Articles 2 and 17 of the ICCPR as well as Art. 11 of the ICESCR.

6. Conclusions

Building equal opportunities for Roma and Sinti minorities requires the establishment of human living conditions. National governments must make clear their political will and support for the promotion of these minorities through the implementation of adequate infrastructure projects. The United Nations and other institutions, such as the European Union, must also make a considerable contribution to such programmes. Members of the minority and their own organizations should be included, from the planning to the implementation of an infrastructure for such projects, to a far greater extent than has thus far been the case. Only if we systematically resist racism and discrimination will majority and minority groups be able to coexist peacefully, with equal rights in all countries of the world.

Certainly, States have the right to control their borders and make sure that it is not a porous entry for criminals, who may also take advantage of the misery and desperate conditions of would-be immigrants. However, justice and solidarity are not antonyms, they come hand in hand, just like public security and welcome. National common good, in any case, has to be considered in the context of the universal common good.

As seen in previous paragraphs, Roma and Sinti contribute to create an atmosphere of insecurity among citizens living in the suburbs of cities like Rome, Milan and Naples. As such, States have a duty to take effective measures to guarantee public security of their citizens. National counter-crime strategies should, above all, seek to prevent acts of violence, robberies, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.

While the complexity and magnitude of the challenges facing States and others in their efforts to balance public security issues and human rights can be significant, international human rights law is flexible enough to address them effectively. Effective public security measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals within their jurisdiction. At the outset, it is important to highlight that the vast majority of counter-crime measures are adopted on the basis of ordinary legislation. In a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human

rights may be permissible.²⁴ These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.

²⁴ See, Human Rights Committee, general comment N° 31, para. 6, and Siracusa Principles on the limitation and derogation of provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex).