

HUMAN RIGHTS WATCH

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February 29, 2012

Members of the United Nations Committee on the Elimination of Racial Discrimination (CERD)

Attn: Gabriella Habtom, Secretary to UN Committee on the Elimination of Racial Discrimination
UNOG-OHCHR
CH 1211 Geneva 10
Switzerland

Re: CERD Review of Italy

Dear Committee Members,

We write in advance of the United Nations Committee on the Elimination of Racial Discrimination's upcoming review of Italy. Attached to this end please find the Summary and Detailed Recommendations of our March 2011 report *Everyday Intolerance: Racist and Xenophobic Violence in Italy*.

The full report is available at

<http://www.hrw.org/reports/2011/03/21/everyday-intolerance-o>.

Racist violence is a serious problem in Italy. Cities across the country have seen mob violence and individual attacks targeting migrants, Roma, and Italians of foreign descent in recent years. Mobs rampaged through Roma camps in Naples in May 2008 and assaulted African seasonal migrant workers in Rosarno, Calabria, in January 2010. A group of at least 15 people attacked a Bengali bar in Rome in March 2010. More recently, in December 2011, an angry mob attacked a Roma camp in Turin after a teen-aged girl falsely claimed she had been raped by two Roma men. Three days later, in Florence, a 50-year-old man with links to the extreme right opened fire on Senegalese street vendors, killing two and seriously wounding three others.

Individual attacks include the September 2008 murder of Abdoul Guiebre, an Italian of Burkina Faso origin bludgeoned to death on the street in Milan after a petty theft from a café; the brutal beating of a Chinese man in October 2008 as he waited for a bus in Rome; and the February 2009 attack on an Indian man in a town outside Rome, in which he was beaten, doused with gasoline, and set on fire.

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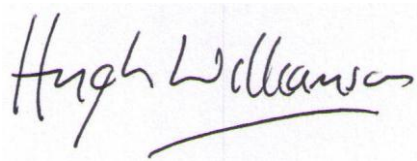
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Everyday Intolerance documents the Italian state's failure to take effective measures against such hate crimes. Prosecutions for racially-motivated violence are rare, with Italian officials downplaying the extent of the problem and failing consistently to condemn attacks. Insufficient training of law enforcement and judiciary personnel and incomplete data collection compound the problem. At the same time, political rhetoric, government policies, and media coverage linking immigrants and Roma to crime have fueled an environment of intolerance.

Human Rights Watch believes Italy must strengthen its criminal law provision allowing for enhanced sentencing for racially-motivated crimes to ensure it is applicable when crimes are motivated wholly or in part by hatred on the grounds of race or other protected grounds. Justice and law officials should receive more consistent training, and the Italian authorities should collect appropriate data in order to analyze trends in racist and xenophobic violence and ensure an appropriate response.

We hope you will find our analysis useful and would welcome an opportunity to discuss our findings further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Sincerely,

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Hugh Williamson
Director
Europe and Central Asia Division

A handwritten signature in black ink that reads "Julie de Rivero". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Julie de Rivero
Geneva Director

Summary and Detailed Recommendations of Human Rights Watch's report "Everyday Intolerance"

Summary

In recent years in Italy, racism and xenophobia have boiled over into violence. Mob violence against Roma in Naples in May 2008 and attacks on seasonal migrant workers in Rosarno, a small town in the southern region of Calabria, in January 2010 made international headlines. A café owner bludgeoned to death Abdoul Guiebre, an Italian of Burkina Faso origin, on the street in Milan in September 2008 after a petty theft. Two men in a square in Naples assaulted Marco Beyene, an Italian of Eritrean origin, in March 2009, to shouts of "shitty nigger" ("*negro di merda*"). A group of 15 to 20 people attacked Bengalis in a bar in Rome in March 2010, injuring four people and damaging the property.

Hate crimes do not take place in a vacuum. In a country that has seen a dramatic increase in immigration, particularly over the past 10 years, a political discourse that links immigrants and Roma and Sinti (many of whom are Italian citizens) to crime has helped to create and perpetuate an environment of intolerance. Since 2008, the government of Silvio Berlusconi, in coalition with the openly anti-immigrant Northern League party, has adopted "emergency" decrees to facilitate strong-handed measures against undocumented migrants and Roma and Sinti; passed legislation to make undocumented entry and stay in Italy crimes; and attempted to impose harsher penalties for crimes committed by undocumented migrants than by citizens and legal residents. Berlusconi argued in January 2010 that "a reduction in [the number of] foreigners in Italy means fewer people to swell the ranks of criminals." Elected officials across the political spectrum have engaged in anti-immigrant and anti-Roma rhetoric.

Media observers and representatives of anti-racism NGOs have become increasingly concerned about the negative portrayal of immigrants and minorities, including Roma and Sinti, in media reporting, and the impact of that reporting on public perceptions of those communities. A study conducted by Sapienza University of Rome during the first half of 2008 found that only 26 out of 5,684 television news stories about immigrants did not relate to crime or security issues – a statistic Navi Pillay, the United Nations High Commissioner for Human Rights, called "stunning" following a March 2010 visit to Italy. Television is the main source of news for 80 percent of the Italian population.

A growing and pervasive racism affects every aspect of life, noted Chiara (pseudonym), an Italian woman in the Tor Bella Monaca district of Rome who has observed hatred and the potential for violence creep into her everyday routines. She told Human Rights Watch that

other mothers complain to her, “I only see black, everyone’s African now. They get a place for their kids in the local daycare center and I don’t.” A young man said to her, “Romanians have stealing in their DNA. I work with a Romanian, but at night, we’re enemies. If I see him, I beat him up.” Chiara was talking to a Moroccan friend on the bus when another passenger yelled at her, “If you talk to them, they’ll never leave!” A Romanian friend of hers bought himself a bicycle so he could avoid the regular insults that came with riding the bus. She said the guard at the supermarket told her daughter to stay close “because there were gypsies about who steal kids.”

International human rights law imposes clear obligations on states to undertake effective measures to prevent racist and xenophobic violence (the duty to protect), and to vigorously investigate and prosecute perpetrators (the duty to provide an effective remedy). Authorities should, in addition, publicly and unequivocally condemn such violence, in order to reiterate that the violence is unacceptable, and express support for those at risk. The duty to protect and the duty to provide an effective remedy apply whether the perpetrators of the violence are agents of the state or private actors.

Italian authorities are failing to live up to these obligations. In part, this reflects a failure to identify racist and xenophobic violence as a serious issue. Public authorities tend to minimize the extent of racist violence in Italy, calling such crimes episodic and rare, and the racist or xenophobic dimension of events—such as the targeted attacks on sub-Saharan African seasonal migrants, gangs that target immigrants for extortion and beatings, and attacks on Roma settlements—is often minimized or excluded. The Italian interior minister has repeatedly stated that Italy is not a racist country and referred to racist violence as “episodes ... that ... remain completely marginal and are rejected by society.” A representative of the local government of Tor Bella Monaca, the scene of numerous attacks on migrants over the past several years, told Human Rights Watch that these incidents “are not about racism, but rather a problem of cohabitation, of numbers.” The National Office against Racial Discrimination, a government body, only began tracking incidents of racist violence in September 2010.

The most important instrument in Italian criminal law to combat racist and xenophobic violence—a penalty enhancement scheme providing for an increase in prison sentences of up to one-half for perpetrators of crimes aggravated by racist motivation—has yet to live up to its promise. The restrictive wording of the statute, which speaks of racist or hate “purpose,” rather than “motivation,” and its failure to acknowledge explicitly the possibility of mixed motives, has given rise to narrow interpretations by the courts and limited applicability in practice. Crimes that may have had a bias motivation are frequently not registered, investigated, or prosecuted as such. While the approach of the courts appears to be evolving, Human Rights Watch research indicates that the aggravating

circumstance provision is used effectively when racist animus appears to be the sole motivation for an assault, but the racist dimension of a crime is downplayed or ignored altogether when the alleged perpetrator(s) appear to have other, additional, motives.

Because racist and xenophobic violence is not considered a pressing issue, there is a lack of systematic specialized training for law enforcement personnel and prosecutors in racist and xenophobic violence. The director of the National Police Training Institute as well as the head of a major police officer union stressed that Italians were not “by nature” racist and that racist and xenophobic violence is not a statistically significant problem. Police officers do not receive specialized training in identifying and investigating racist and xenophobic violence. Similarly, there is no obligatory training for prosecutors with a specific, in-depth focus on bias crimes.

Systematic collection of data on racist and xenophobic violence, and hate crimes generally, is critical to analyzing trends and ensuring an appropriate response. Yet Italy has only recently begun to collect any kind of data on hate crimes, and what exists is partial. The government does not publish statistics on hate crimes, though it can make data available upon request. Authorities point to the low numbers of official complaints and prosecutions for racially aggravated violence to argue that such violence is rare, without factoring in underreporting and failure by law enforcement and the judiciary to correctly identify such violence.

Undocumented migrants, including Roma from other European countries, are at a particular disadvantage when it comes to reporting racist and xenophobic violence. While a provision exists for granting victims of crimes special leave to stay in Italy, it is a discretionary power, and little known among migrants. Reporting a crime can also expose undocumented migrants to the risk of conviction for unlawful stay in Italy under the 2009 law making such stay a crime, with no guarantees that once any legal proceedings are concluded they will not be ordered to leave the country. As one South Asian man put it, “We’re foreigners here, it’s too dangerous to file a complaint.”

Italian Prime Minister Berlusconi famously said in 2009 that Italy should not become a multiethnic country. The reality is that Italy is already a mosaic of ethnicities, nationalities, and national origins, and is likely to become even more diverse in the years to come. Worrying signs already exist that increasing diversity has led to increasing intolerance, with some resorting to or choosing violence to express racist or xenophobic sentiments. The government must act now to arrest this trend.

Detailed Recommendations

To the Government of Italy

- Affirm the government’s repudiation of racism and xenophobia.
- Publicly and unequivocally condemn instances of racist and xenophobic violence.
- Develop and finance a national strategy on combating racism and xenophobia that sets out concrete measures and a timetable for implementation, and designates the government institution responsible for monitoring implementation.

To the Parliament

- Reform the Criminal Code to incorporate the aggravating circumstance of hate motivation into article 61, and ensure that such reform reformulates the scope of the aggravating circumstance to:
 - Allow for mixed motives and the application of the aggravating circumstances in cases where violence has been committed “in whole or in part” due to bias; and
 - Expand the list of protected characteristics in the provision to include, at a minimum, sexual orientation and gender identity.
- Ensure appropriate budgetary allocation for and implementation of a national strategy on combating racism, xenophobia, and hate crimes.
- Act to create an independent police complaints body to investigate all allegations of human rights abuse by law enforcement personnel, including racism and discrimination.

To the Ministry of Justice

- Promote reform of existing legislation on hate crimes:
 - Incorporate the aggravating circumstance of hate motivation into the Criminal Code;
 - Reform the wording of the provision to ensure that it allows for application of the aggravating circumstances in cases where violence has been committed “in whole or in part” due to racial or other hate bias; and
 - Expand the list of protected grounds, to include, at a minimum, sexual orientation and gender identity.
- Collect and publish on a regular basis statistics on preliminary investigations, pending trials, verdicts, and sentences for crimes aggravated by racial bias. These statistics should be disaggregated by type of crime, region, and victim group.
- Launch an outreach campaign to encourage reporting of racially-aggravated and other hate crimes, including raising awareness about the special justice residency permit available to irregular immigrants who are the victims of such crimes.
- Promote reform to ensure that individuals who have benefitted from special justice residency permits are not prevented from seeking longer-term residency options.

To the Ministry of the Interior

- Institute obligatory training in the basic police academies for new recruits, specialized courses, and in-service training on detecting, responding to, and investigating hate crimes, including racist and xenophobic violence.
- Develop, in conjunction with the Ministry of Defense, specific guidelines for law enforcement personnel for the investigation of hate crimes, including racist and xenophobic violence.
- Ensure that each police station has at least one officer, or a group of officers, commensurate with the population needs, with advanced specialized training in hate crimes, including racist and xenophobic violence.
- Launch a public campaign, in collaboration with the Ministry of Justice, to encourage confidence in law enforcement among minority communities and reporting of hate crimes, including racist and xenophobic crimes.
- Ensure that campaigns to encourage reporting of racist crimes include information about the special permit for undocumented migrants who are victims of a crime.
- Ensure, in cooperation with the Ministries of Justice and Defense, that the data collection system is organized to record all suspected hate crimes, including racist and xenophobic violence, disaggregated by type of crime and victim group.
- Publish on a regular, periodic basis statistics on racist and xenophobic violence, as well as other bias crimes.
- Extend a request to the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) for technical assistance in training law enforcement officers in detecting and investigating hate crimes.
- Conduct crime surveys, or provide financial support to outside institutions to conduct crime surveys, with a view to conducting them each year to better identify trends.

To the Ministry of Defense

- Ensure that all Carabinieri receive obligatory training on detecting, responding to, and investigating bias crimes, including racist and xenophobic violence.
- Develop, in conjunction with the Ministry of Interior, specific guidelines for law enforcement personnel for the investigation of bias crimes, including racist and xenophobic violence.
- Ensure that each Carabinieri station has at least one officer, or a group of officers, commensurate with the needs of the population, with advanced specialized training in bias crimes, including racist and xenophobic violence.
- Ensure that the data collection system is organized to record all suspected bias crimes, including racist and xenophobic violence, disaggregated by type of crime and victim group.

To National Office against Racial Discrimination (UNAR)

- Ensure that the 2011 publicity campaign includes a specific focus on racist and xenophobic violence.
- Ensure that the new system for recording complaints of racist and xenophobic violence is fully implemented, including through appropriate training for all those tasked with receiving and processing complaints.
- Promote and participate in the efforts of the Ministry of Interior, Ministry of Justice and Ministry of Defense to institute and/or improve specialized training on detecting, investigating and prosecuting bias crimes, including racist and xenophobic violence, and to improve and make more transparent data collection on such crimes.

To the Higher Judicial Authority (Consiglio Superiore della Magistratura, CSM)

- Ensure that the yearly cycle of continuing education courses includes in-depth sessions devoted to legislation and jurisprudence on racially motivated violence.
- Encourage the creation of designated task forces of prosecutors specialized in racist crimes in sizeable public prosecutor's offices, and the designation of at least one prosecutor in smaller public prosecutor's offices.

To the European Union

- The European Commission's Directorate General for Fundamental Rights should assess Italy's compliance with its obligations under regional human rights and European Union law, including the Charter of Fundamental Rights, with respect to preventing and prosecuting racist and other hate violence, and report its findings in its annual report on human rights in the European Union.
- The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) should be seized by the situation in Italy and consider appropriate action, including an own-initiative report assessing Italy's compliance with EU law and principles in the field of anti-racism and discrimination.
- The EU Fundamental Rights Agency should conduct an in-depth country investigation into racist and xenophobic violence in Italy, as a follow-up on the incident report it published on the May 2008 violence against Roma in Ponticelli, with a view to providing decision-making institutions such as the European Commission with information and analysis relevant to assessing Italy's compliance with obligations to counter racist violence.

To the Council of Europe

- The European Commission against Racism and Intolerance should use the opportunity of its ongoing focus on Italy to highlight the findings of this report and to reiterate its past

recommendations to the Italian government on measures to counter racist and xenophobic discourse in politics; adequate implementation of criminal law provisions against racism and discrimination; and adequate training for all those involved in the criminal justice system.

- The commissioner for human rights should continue to monitor closely the situation in Italy and consider a follow-up communication to the Italian authorities on action taken to implement the recommendations made in his April 2009 report on Italy.

To the United Nations

- The High Commissioner for human rights should follow up on her March 2010 visit to Italy and inquire with the authorities about the steps taken to address her concerns and recommendations pertaining to the treatment of Roma and migrants and racist discourse and stereotyping in the media.
- The Special Rapporteur on contemporary forms of racism should continue to monitor closely and draw attention to the situation in Italy, including through urgent action and communications to the government on individual cases and on the steps authorities have taken to implement his recommendations pursuant to his visit in 2006. He should also consider conducting a follow-up visit to the country.