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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بالاحتجاز التعسفي*

إضافة

البعثة إلى إيطاليا**

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* تأخر تقديم هذه الوثيقة.

** يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق هذا الموجز فـــيُعمّم كما ورد وباللغة التي قُدم بها فقط.

موجز

قام الفريق العامل المعني بالاحتجاز التعسفي بزيارة إيطاليا في الفترة من ٣ إلى ١٤ تشرين الثاني/نوفمبر ٢٠٠٨ بناءً على دعوة من الحكومة. ويتضمن هذا التقرير الاستنتاجات التي خلُص إليها الفريق العامل فيما يتعلق بحالات الاحتجاز في كل من نظام القضاء الجنائي ونظام الاحتجاز الإداري، وبخاصة للمهاجرين وملتمسي اللجوء.

وقد خلص الفريق العامل إلى أن الضمانات ضد الاحتجاز غير المشروع في إطار نظام القضاء الجنائي كثيرة وصارمة، أقله على الورق. إلا أن المدة المفرطة التي تستغرقها الإجراءات الجنائية يمكن أن تفضي إلى حالات من الاحتجاز التعسفي، سواء عندما يُحتجز المدعى عليهم بانتظار محاكمتهم أو عندما تصدر بحقهم، رغم عدم كونهم محتجزين بانتظار محاكمتهم، أوامر بالسجن بعد انقضاء فترة طويلة إلى حد غير معقول البتة منذ ارتكاب الجريمة. فالنسبة المئوية للسجناء الذين ينتظرون صدور أحكام نهائية في قضاياهم ومن ثم لم تصدر بحقهم عقوبات نهائية تفوق إلى حد بعيد ما هي عليه في دول أوروبية غربية أخرى.

ويشكل المهاجرون نسبة مفرطةً على نحو خطير من مجموع نزلاء السجون، وهم لا يستفيدون فعلياً من بدائل السجن المتاحة على قدم المساواة مع المواطنين الإيطاليين.

وقد أعلنت الحكومة أن الجريمة المنظمة كجرائم المافيا، والتهديد الذي يمثله الإرهاب الدولي، والجرائم المرتكبة من قِبَل المهاجرين بصورة غير نظامية، هي أمور تشكل حالات طوارئ تهدد الأمن العام، وقد تصدّت الحكومة لكل منها باعتماد تدابير استثنائية. ويشعر الفريق العامل بالقلق تحديداً إزاء نقص الضمانات المتعلقة بالتمديد المتكرر لفترات الاحتجاز بموجب المادة ٤١ مكرراً من قانون نظام السجون، وإزاء إبعاد الأجانب المشتبه في ممارستهم أنشطة إرهابية إلى بلدان يواجهون فيها خطر الاحتجاز التعسفي والتعذيب، وإزاء القواعد المطبقة التي من شأنها أن تؤدي إلى زيادة المعدل غير المتناسب أصلاً لسجن الأجانب.

وفيما يتعلق بمراكز الاستقبال الأولي لملتمسي اللجوء، يلاحظ الفريق العامل أن القيود المفروضة على حرية ملتمسي اللجوء المحتجزين في هذه المراكز لا تستند إلى أساس قانوني سليم. كما يساور الفريق العامل بعض الشواغل فيما يتعلق باحتجاز المهاجرين بصورة غير نظامية في مراكز تحديد الهوية والطرد. وتشير هذه الشواغل إلى جملة أمور منها احتجاز الأشخاص الذين قضوا بالفعل فترات عقوبتهم الجنائية، واحتجاز ملتمسي اللجوء والاحتجاز المتكرر في كثير من الأحيان لأشخاص من غير المحتمل في الواقع أن يتم إبعادهم.

ويتيح نظام القضاء الجنائي مجموعة واسعة من بدائل الإجراءات الجنائية ضد الأطفال المخالفين للقانون كما يتيح، في حالة المحاكمة والإدانة، بدائل للسجن تهدف إلى إتاحة التعليم المتواصل للطفل وإعادة إدماجه بنجاح في المجتمع.

وفي إطار نظام الرعاية الصحية، أُلغيت المؤسسات المغلقة المخصصة للأشخاص الذين يعانون من إعاقات عقلية. إلا أن هناك، كجزء من نظام القضاء الجنائي، نظاماً من "التدابير الأمنية" المفتوحة فيما يخص الأشخاص الذين ارتكبوا جرائم والذين يعتبرون إما "خطرين" بسبب إصابتهم بمرض عقلي أو مجرمين اعتادوا على الجريمة أو مجرمين محترفين.

واستناداً إلى هذه الاستنتاجات، يقدم الفريق العامل عدداً من التوصيات. وهو يطلب إلى حكومة إيطاليا أن تتخذ، على سبيل الأولوية، تدابير تشريعية وغير ذلك من التشريعات لخفض المدة التي تستغرقها المحاكمات الجنائية. وهو يرى أن من الضروري أيضاً اتخاذ تدابير لخفض نسبة السجناء المحتجزين في انتظار المحاكمة. وفيما يتعلق بعمليات الاحتجاز بموجب المادة ٤١ مكرراً، يوصي الفريق العامل بتعزيز الرقابة القضائية. وينبغي إعادة النظر في التشريع الذي يعتبر عدم الامتثال لقوانين الهجرة جريمة يعاقَب عليها بالسجن (أو ظرفاً مشدداً).

وفيما يتعلق باحتجاز المهاجرين وملتمسي اللجوء، يوصي الفريق العامل بأن يُستند إلى أساس قانوني سليم في تطبيق القيود المفروضة على حرية ملتمسي اللجوء الذين يصلون إلى إيطاليا بصورة غير نظامية، إذا كانت تلك القيود ضرورية أصلاً. كما يتضمن التقرير توصيات تدعو إلى الحد من الاحتجاز غير الضروري أو غير المعقول في مراكز تحديد الهوية والطرد المخصصة للأجانب الذين يراد إبعادهم.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS MISSION TO ITALY

(3-14 November 2008)

CONTENTS

CONTENTS (*continued*)

I. INTRODUCTION

1. The Working Group on Arbitrary Detention visited Italy from 3 to 14 November 2008 at the invitation of the Government. The delegation consisted of Mr. Aslan Abashidze and Mr. Roberto Garretón, members of the Working Group, who were accompanied by two officials from the Office of the United Nations High Commissioner for Human Rights and interpreters.

2. The Working Group expresses its gratitude to the Government of Italy, to the representatives of the United Nations High Commissioner for Refugees (UNHCR), of the UN Interregional Crime and Justice Research Institute (UNICRI) and of the UN Regional Information Centre, as well as to the members of Italian civil society organizations and lawyers in private practice met.

II. PROGRAMME OF THE VISIT

3. The Working Group travelled to Rome, Naples, Milan, and the Eastern Sicilian towns of Caltanissetta, Cassibile and Portopalo di Capo Passero.

4. It held meetings with officials from the Ministry of Interior, including Secretary of State Alfredo Mantovano, the Ministry of Justice, including Secretary of State Maria Elisabetta Alberti Casellati, the Ministry of Labour, Health and Social Policies; the Senate Committee for Justice Affairs; the Superior Council of the Magistracy and the Cassation Court. In addition to meetings with the central authorities, in the cities and towns visited the Working Group had the opportunity to obtain information from and exchange views with numerous judges and prosecutors, local officials of the prefectures and law enforcement agencies, prison officials, psychiatric doctors, representatives of the organizations administering centres for refugees and migrants. The Working Group also met with the Ombudsman for the rights of persons deprived of their liberty of the Regions Lazio and Campania as well as of Milan Province.

5. In the course of the visit, the Working Group further met with UNHCR representatives, members of the criminal bar and representatives of numerous civil society organizations active in the fields of criminal justice, immigration and refugees.

6. The facilities holding persons deprived of, or limited in, their freedom visited included Rebibbia (Rome) and Poggioreale (Naples) prisons, a judicial psychiatric hospital, the mental health department of a hospital, facilities for juvenile offenders, the police holding cells in Naples, facilities for asylum-seekers and identification and expulsion centres for migrants. A complete list is annexed to this report.

7. The Working Group enjoyed in all respects the fullest cooperation from the Government. It was allowed to visit all places of detention requested and to interview in private detainees of its choice, without any restriction.

III. INTERNATIONAL HUMAN RIGHTS COMMITMENTS AND MONITORING MECHANISMS

8. Italy has ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Covenant on Civil and Political Rights (CCPR), the Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It has accepted the competence of the respective treaty bodies to receive individual complaints under

the CERD, ICCPR and CAT. Italy is not a signatory to the Convention on the Rights of All Migrant Workers and Members of Their Families. It has signed but not yet ratified the Convention on the Rights of Persons With Disabilities.

9. The Government has a proven record of openness to visits by international human rights monitoring and fact finding mechanisms. The Working Group's mission was preceded by visits of the Council of Europe (CoE) Commissioner for Human Rights in June 2008 and of the CoE Committee for the Prevention of Torture (CPT) in September 2008. Such transparency to international scrutiny powerfully reinforces domestic safeguards against human rights violations in general, and against arbitrary detention in particular.

10. There is undoubtedly some overlap between the situations examined by these CoE mechanisms and the issues looked into by the Working Group. It is important, however, to stress that the Working Group's mandate is very specifically to focus on the legal basis and reasons for detention and the procedural safeguards accompanying it.

IV. DETENTION IN THE CRIMINAL JUSTICE SYSTEM

A. Police custody

11. The Criminal Procedure Code defines the cases in which the law enforcement agencies may carry out arrests of persons caught *in flagrante delicto*. Police may also arrest persons not *in flagrante* when there are strong suspicions of the commission of a serious offence.

12. As soon as possible, and in no event later than 24 hours after the arrest, the police "make the arrestee available" to the prosecutor. The prosecutor may interrogate the arrestee, having informed his lawyer. He shall inform the arrestee of the charges against him. Within 48 hours of the arrest, the prosecutor must ask the competent judge for the preliminary investigations (GIP) to confirm the validity of the arrest.

13. The GIP must decide on this request within another 48 hours. He will call a hearing with the prosecutor, the arrestee and his defence lawyer. At this hearing the GIP will also decide on the request for remand custody, assuming the prosecutor has presented such a demand.

14. According to all reports received, detention in the cells of police and carabinieri stations is in the great majority of cases far shorter than the 48 plus 48 hours allowed by the law. Most arrestees are either released or transferred to a prison within a few hours. A lawyer of the arrestee's choosing or an ex officio lawyer are promptly informed upon arrest.

15. The Working Group made an unannounced visit to a police station. Two elements, both important safeguards against arbitrary detention, struck the Working Group. Firstly, the register of detentions and releases was very clear and well kept. Secondly, a sheet informing the detainee of his rights was available not only in Italian, but also in about ten other languages.

16. On a less positive note, several interlocutors of the Working Group alleged that the frequency of incidents of police brutality against persons taken into custody, particularly immigrants, has been rising. Reports regarding individual cases were brought to the Working Group's attention. These allegations need to be vigorously investigated and the policemen responsible held to account. From the point of view of its mandate, however, the Working Group notes that there is no allegation in the cases brought to its attention that the ill-treatment was aimed at extorting a confession from the arrestee or otherwise linked to the criminal procedure against the arrestee. The Working Group has therefore not further investigated these reports.

B. Safeguards against arbitrary detention in criminal procedure

1. Criminal trial

17. In meetings with the Working Group, ministerial officials, judges and prosecutors often referred to Italy's criminal procedure as "*iper-garantista*", i.e. abounding with safeguards (with a hint that the amount of safeguards might be excessive).

18. The public prosecutor, who conducts the investigations with the assistance of the judicial police, has to obtain judicial approval for any measures interfering with fundamental rights, such as phone tapping, searches and seizures, or remand custody. If at the conclusion of the investigations the prosecutor takes the stance that there is sufficient evidence to warrant a trial, he has to submit the case to a judge (named "judge of the preliminary hearing", "GUP"). The GUP will hold a hearing, in fact a kind of trial based on the evidence collected during the investigation, and decide whether to dismiss the charges, order further investigations, or send the case to trial.

19. All first instance judgements imposing a prison term can be appealed to a second instance court. The appeals procedure is not limited to points of law and can include a full hearing with witnesses and other evidentiary proceedings. The judgement of the second instance court can be challenged before the Cassation Court, the court of last instance.

20. The criminal procedure code provides also for a number of simplified proceedings. In some of these proceedings the accused will waive his right to a full trial and accept to be judged already by the GUP in exchange for a reduced sentence. In others, such as the fast-track trial available in case of arrest in flagrante delicto, the prosecutor can bring the accused directly before the trial court without a hearing before the GUP.

2. Remand custody

21. As for remand custody, if during the investigations phase the prosecutor considers that it is necessary to detain the suspect or accused, he can request the GIP to order remand custody. The criminal procedure code provides for a number of precautionary measures limiting personal freedom short of remand custody, such as home arrest and reporting duties. The law expressly states that remand custody in prison can only be ordered if any other measure would be inadequate to avert the risk of the accused (i) tampering with evidence, (ii) fleeing, or (iii) committing serious, violent crimes.

22. The judicial order imposing remand custody can be appealed to a tribunal composed of three judges. If the tribunal confirms the remand custody order, the defendant can appeal to the Cassation Court.

23. To sum up, safeguards against arbitrary detention in the criminal justice system are numerous and - at least in the letter of the law - incisive.

C. Concerns regarding overcrowding of prisons and excessive duration of remand detention and of criminal trials

1. Overcrowding and statistics on development of prison population

24. In most meetings, the Working Group's interlocutors - both representatives of the authorities and those belonging to civil society organizations - mentioned overcrowding of prisons as the main problem facing Italy with regard to detention.

25. The level of incarceration in Italy is in the medium range of Western European countries. As of 15 October 2008, there were 57,030 prisoners, which corresponds to about 100 prisoners per 100,000 inhabitants. The capacity of the prisons system "according to regulations",[1] however, was only 43,085 prisoners. There are, of course, local situations of far more serious overcrowding, including some prisons in which the number of detainees exceeds double the capacity.

26. To address this situation of overcrowding, which has been chronic in the last two decades, in July 2006 Parliament adopted a law on the basis of which all prisoners serving a sentence of less than three years were to be released and all other prisoners to receive a three years deduction from the prison term they were serving. Some particularly serious offences were excluded from the clemency measure. As a result, one out of every three prisoners was freed! It is not for the Working Group to state whether the benefits of the clemency law outweigh its disadvantages. There is little doubt, however, that such a clemency measure risks undermining the perception of the rule of law.

27. Two years later, at the time of the Working Group's visit, the prison population had grown back to 57,030 prisoners. According to officials, at the time of the visit, it was growing by 500 to 600 detainees per month, so that the prison population level preceding the clemency measure would be surpassed within half a year or little more.

2. Concerns regarding remand detention

28. The Working Group notes that the complaint of excessive recourse to remand detention is often levelled against Italy's criminal justice system.

29. The criminal procedure code contains abundant language aimed at ensuring that remand custody is not ordered lightly. For instance, there must be "serious circumstantial evidence of guilt"; allegations that the accused might tamper with evidence must be based on specific facts; allegations that the accused may commit further offences must be based on "specific conduct" or previous convictions. Representatives of the criminal bar association, however, alleged that the principle that remand detention must be a last resort is systematically violated. They added that remand detention was used as an "investigative tool" to compel defendants to incriminate themselves and others in exchange for release or its substitution with home arrest.

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[1] The capacity "according to regulations" is determined by the Ministry of Justice on the basis of European standards relating to the treatment of prisoners.

30. One objective element of the situation is that only four out of ten prisoners in Italy are serving a final sentence. Government statistics show that, as of 30 September 2008, 28.5 per cent of the prison population was awaiting trial or the first instance judgement, while the other prisoners had been convicted at least in first instance (17 per cent were awaiting the decision of the appeals court, 6 per cent were awaiting the decision of the Cassation Court, and 43 per cent were serving a sentence of imprisonment that had become final).[2] The percentage of the prison population awaiting final judgement is much higher in Italy than in any other large or medium sized Western European country.[3]

31. The allegedly excessive duration of remand custody is also an element of concern. In this respect, the Working Group observes that the Criminal Procedure Code determines the maximum duration of remand custody by reference to the offence charged. The limit is overall two years for the least serious category of offences and six years for the most serious offences.

32. The Code also establishes limits to the duration of remand detention for each procedural stage. For instance, a person accused of murder must be released after one year of remand detention if the investigations phase is not completed, i.e. the GUP has not ordered that the accused be put to trial. The same defendant will have to be released if more than 18 months expire between the GUP's decision and the first instance judgement. This limit is raised to two years if the offence is related to a mafia organization. But in the case of lesser offences, remand custody may not exceed nine months between the beginning of remand custody and the first instance judgement.

33. In the case of the most serious offences, detention between conviction in the first grade trial and the judgement of the appeals court may not exceed 18 months, and the same limit applies to detention between confirmation of the guilty finding by the appeals court and the judgement of the Cassation Court.

34. There is in fact, in spite of these not too tight limits, frequent alarm among law enforcement agencies, in the judiciary and in the media about the release due to expiry of the maximum duration of remand custody of persons accused of heinous crimes committed by mafia organizations. This suggests that the main problem might be the duration of judicial proceedings.

3. Concerns regarding the right to an expeditious trial

35. Excessive delays in the administration of justice in Italy are a well-known problem. In the years 1999 to 2007, the European Court of Human Rights found no other country as often in violation of the right to trial within a reasonable time as Italy.[4]

36. Unreasonable delays in judicial proceedings can of course lead to arbitrary detention when the defendant is detained on remand. This is not so much a question of the limits on the duration of remand custody fixed in the abstract by law, as a question of the way in which police, prosecution and judiciary handle a specific case in which the accused is in remand custody.

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[2] The remaining six per cent were interned serving a security measure or fell into several of the above categories.

[3] See the World Pre-trial/Remand Imprisonment List, International Centre for Prison Studies, King's College, London, <www.prisonstudies.org>.

[4] European Court of Human Rights, Annual Report 2007, p. 144.

37. Interviews with detainees and submissions by civil society organizations have drawn the Working Group's attention to a second, less evident way in which the unreasonable length of proceedings can result in arguably arbitrary detention. In many cases of persons accused of lesser offences and not incarcerated awaiting trial, years might pass between the commission of the offence and the conviction. The defendant might in the meantime have started a new life when he or she is found guilty and ordered - out of the blue, in his or her perception - to serve a prison term. In the words of a judge of the tribunal in Rome, "a prison sentence sanctioning with the deprivation of liberty an offence committed ten or fifteen years earlier is not worthy of a civilized country, as it becomes an obstacle to the process of re-integration of the offender into society".[5]

D. Extraordinary measures in the fight against organized crime

38. A number of laws, including the Criminal Procedure Code and the Law on the Penitentiary System contain special provisions regarding persons charged with being members of a mafia organization.

39. With regard to remand custody, for instance, the general principle is that remand custody in prison can only be ordered if any other measure would be inadequate - the burden being on the prosecutor to prove it. For persons charged with offences linked to a mafia organization, however, the Code dictates that remand custody must be ordered "except if there are elements indicating that there are no precautionary needs".

40. The Working Group's attention has been particularly drawn to article 41 bis of the Law on the Penitentiary System. This article, titled "emergency situations", was introduced as a temporary provision in July 1992, after the Sicilian mafia killed in two bomb attacks the prosecutors Giovanni Falcone and Paolo Borsellino. In 2002, Parliament decided to transform the "temporary" into a permanent special detention regime. There were, at the time of the Working Group's visit, 567 men and 5 women subjected to article 41 bis detention. With the exception of three men charged with terrorism offences, all of them were members of mafia organizations. The rational underlying article 41 bis is that leaders of mafia organizations retain their ties and their leadership role while incarcerated, continue to direct their organizations' activities and to order the commission of crimes, and that it is therefore necessary to cut their ties to the world outside.

41. A prisoner subjected to article 41 bis regime is isolated in his cell for at least 22 hours per day; the remaining two hours outside the cell are spent in a small recreational area resembling a cage with a group of five other 41 bis prisoners; family visits are limited to one or two per month, any other visits (except by the lawyer) are excluded; correspondence is checked, phone calls strictly limited; all prison work and social activities are suspended. It is, quite understandably, referred to as "tough imprisonment". The Working Group met several prisoners subjected to this regime, one of them in his 14th year of article 41 bis incarceration.

42. A prisoner is placed in article 41 bis regime by an order of the Minister of Justice. The reasoning should set forth the grounds on which the Minister assumes that the detainee is maintaining his ties with organized crime while in prison. It is issued initially for a period between one and two years and can then be renewed for one year at a time. The prisoner can submit an appeal against the order to the tribunal overseeing the execution of sentences.

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[5] Paolo Canevelli, La magistratura di sorveglianza tra carcere, misure alternative e nuove forme di probation, Atti del Convegno "Il carcere: extrema ratio. Nuovo diritto penale", Rome, July 2007.

43. The European Court of Human Rights has been seized many times with communications by prisoners subjected to the article 41 bis regime. The Court found consistently that there was no violation of the prohibition on torture, inhuman or degrading treatment. The Court found violations of the right to respect for family life and correspondence in some cases, and article 41 bis has been amended in response to these decisions. Finally, the Court found in several cases violations of the right to access to court on the ground that the appeal against the order imposing the article 41 bis regime was decided with excessive delay.

44. The Working Group's attention was seized particularly by the complaint of article 41 bis prisoners that they had, in practice, no effective remedy against the renewal of the special detention regime year after year. The Working Group considers that a special surveillance and isolation regime which might be justified at the outset can become arbitrary if its renewal is not subject to sufficient safeguards.

45. Governmental statistics provided to the Working Group show that, in the last two years, appeals to the tribunal against the order of the Minister subjecting a prisoner to the article 41 bis regime obtained the annulment of the order in slightly more than ten per cent of the cases.[6]

46. The issue of the extension, year after year, of the article 41 bis order is indeed an intricate one. On the one hand, it is difficult for the Ministry to prove that, in spite of several years of draconian segregation, a prisoner is still involved in the activities of his criminal organization. Because of the difficulty of such proof, article 41 bis relieves the Ministry of the burden of providing new elements every year which would establish continuing contacts between the prisoner and the organization and shifts the burden of proof on the detainee. But for the detainee it is extremely difficult to actually prove that "his ability to maintain contacts with the criminal or terrorist organizations has vanished", as article 41 bis para. 2 bis requires.

47. A further issue of concern is the delay with which appeals against orders imposing article 41 bis detention are decided. The Working Group reviewed court decisions on such appeals and found that the court issued its decision on average five or six months after the appeal was filed. Considering that the duration of the order is one year, this is an excessive delay which substantially undermines the relevance of the remedy.

48. While the Working Group was visiting Italy, Parliament was debating and approving reforms to article 41 bis aimed at increasing the rigour of the system. The changes included increasing the duration of the initial order imposing article 41 bis detention from two to three years and the duration of the subsequent renewal orders from one to two years. The reform further intends to reduce the scope and incisiveness of the judicial review of the ministerial orders imposing article 41 bis detention.

49. Although it has serious concerns about the article 41 bis detention regime, the Working Group can accept that it might be a necessary tool in the fight against the mafia organizations. The changes to the system currently envisaged, however, would significantly weaken the already feeble safeguards against abuse of this very strict form of detention.

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[6] In 2008 (from 1 January to 4 December 2008), the courts quashed the order imposing article 41 bis detention in 65 cases and modified it in another 91 cases. There were around 572 prisoners subjected to article 41 bis detention at the time of the Working Group's visit.

50. The article 41 bis regime is not the only special detention regime in Italy's penitentiary system. The Working Group also visited prisoners detained in an "E.I.V. section" (E.I.V. stands for "high vigilance index"). While prisoners in an E.I.V. section are, from a technical-legal perspective not subjected to a special detention "regime" but only to segregation from the common prison population, they are in practical terms subjected to limitations similar, though attenuated, to those of the article 41 bis regime (isolation, severe restrictions on activities, limits on visits). It is used to keep prisoners who have been released from the 41 bis section, as well as others considered dangerous, under close observation. Contrary to the article 41 bis regime, E.I.V. is based on a Ministerial circular and not on a statutory provision. As a consequence, the decision to impose E.I.V. detention cannot be challenged before the judge supervising the prison. An appeal to the regional administrative court might be possible. This remedy appears not to have been tested, also as it would, in practice, be of dubious effectiveness given the delays in proceedings before administrative courts.

E. Criminal justice and extraordinary measures in the fight against terrorism

51. In the past seven years, Italy introduced new legislation, including provisions criminalizing various forms of support to terrorist activities, to effectively fight international terrorism. More than 90 persons charged with offences committed in connection with international terrorist activities have been convicted and sentenced to prison terms in Italy since 11 September 2001, although there were no attacks by international terrorist organizations on Italian soil. The offences successfully charged go from production of false identity documents in support of the activities of a terrorist organization to organizing and participating in such an organization. The record of the Italian judicial system is a powerful demonstration that a response to international terrorism protecting the population against terrorist crimes while upholding fundamental principles of human rights law is feasible.

52. There is, however, also a dark side to the response to international terrorism by the authorities. The Government has deported alleged terrorists to States where they are at substantial risk of arbitrary detention and torture. Best known is the case of Nassim Saadi, a Tunisian citizen, who was to be deported to Tunisia after having served a sentence on terrorism related charges in Italy. There, a military court had sentenced Mr. Saadi to twenty years imprisonment in absentia (the trial took place while he was in prison in Italy). The European Court of Human Rights was seized of the case. It concluded that "the decision to deport the applicant to Tunisia would breach Article 3 of the Convention [the prohibition of torture] if it were enforced".[7]

53. C.F.B.F. was expelled from Italy to Tunisia without being able to resort to a judicial remedy. In Tunisia he was reportedly held at the Ministry of Interior and then in a prison under military jurisdiction without being charged with a crime. In June 2008 E.S.B.K. was deported to Tunisia as a suspected terrorist in spite of interim measures from the European Court of Human Rights requesting the Government not to proceed with the deportation.

54. In July 2005 the Government introduced a law titled "urgent measures to counter international terrorism" (the so-called "Pisanu Law"). This law provides for a special procedure to expel and deport foreigners on the ground that there are well-founded reasons to believe that their presence in Italy could in any way favour a terrorist organization. The deportation order, issued by the Minister of Interior or a prefect, can be appealed to an administrative tribunal, but the remedy has no suspensive effect. As a consequence, it is in practice an entirely ineffective remedy against the risk of torture or arbitrary detention in the country of destination.

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[7] European Court of Human Rights, *Saadi v. Italy*, judgement of 28 February 2008, para. 149.

55. The Working Group recalls that "[t]o remove a person to a State where there is a genuine risk that the person will be detained without legal basis, or without charges over a prolonged time, or tried before a court that manifestly follows orders from the executive branch, cannot be considered compatible with the obligation in article 2 of the International Covenant on Civil and Political Rights" (A/HRC/4/40, para. 49).

56. In the context of non-refoulement obligations in the fight against terrorism, the Working Group's attention was also drawn to the well-known case of Osama Mustafa Hassan Nasr, known as Abu Omar. Abu Omar, who was not charged with any offence either in Italy or in Egypt, was abducted on the street in Milan and flown to Egypt, where he was detained until early 2007. The Milan public prosecutor's office charged 26 U.S. intelligence agents and five members of Italian intelligence services with the abduction. The trial is currently pending before a court in Milan. Successive Italian governments have refused, however, to seek the extradition of the United States citizens accused.

F. Extraordinary measures in the fight against crime by irregular migrants

57. In the past ten years, Italy has experienced a massive influx of both regular and irregular migrants. According to many interlocutors, the year 2008 is setting new records in the numbers of foreigners arriving to Italy eluding immigration controls.

58. The Government has, in political discourse and legislative measures, linked public security and immigration control and declared both to be an emergency requiring extraordinary measures. This approach is embodied in the so-called "security package" adopted by the Cabinet in May 2008. The "security package" consists of numerous provisions, regarding both criminal justice and immigration laws, some of them already enshrined in law, others currently before parliament.

59. As far as criminal law is concerned, it is (and already was before the "security package") a criminal offence punishable with imprisonment for an irregular foreigner to remain in Italy in spite of a written order to leave Italian territory. The Constitutional Court has established the very important principle that the accused foreigner can not be found guilty of this offence if he was for justified reasons (such as a lack of means) unable to comply with the injunction. The new legislation, however, provides that a foreigner who is stopped by the police and found to be in Italy in violation of an injunction to leave the country must be arrested and put on fast track trial.

60. The Working Group is of the opinion that there is a logical incongruity between the Constitutional Court judgement and mandatory arrest. How can arrest be mandatory if the existence of the offence depends on such complex factual questions as whether the foreigner had a justified cause for not complying with the expulsion order? Moreover, mandatory arrest is generally reserved by the Criminal Code to persons apprehended in flagrante while committing a violent offence.

61. The Working Group was relieved to learn that the proposal to punish illegal entry with a prison term, also included in the "security package", had been withdrawn and the sanction reduced to a fine.

62. The "security package" furthermore introduced an amendment to the criminal code making the status of irregularly present foreigner an aggravating circumstance for any offence (Law No. 125 of 24 July 2008). In other words, if an Italian citizen and an irregularly present foreigner steal a car together, the foreigner is to receive a significantly higher sentence than the Italian.

63. The Working Group notes that this policy of criminalization of the situation of irregular immigrants is being pursued against a background of already existing massive over-representation of migrants among the prison population. On 30 June 2007, foreigners constituted 36 per cent of the prison population in Italy. In regions with a strong presence of immigrants, however, this figure was significantly higher.

64. While the Working Group does certainly not intend to minimize concerns about criminality by foreigners in Italy, a closer look at the statistics shows that:

- Foreigners are much more likely to be imprisoned while awaiting trial than Italian citizens: on 30 June 2008, prisoners not serving a final sentence were 49 per cent among Italians and 72 per cent among foreigners

In case of conviction, foreigners:

- Are much more likely to receive a prison sentence even if they are at their first offence[8]
- Much less likely to benefit from alternatives to imprisonment, and
- Therefore, much more likely to be imprisoned for minor offences[9]

65. The main explanation for this unequal treatment appears to be that the system of alternatives to imprisonment, both before and during trial and after conviction, is to a large extent premised on the offender having a certain identity and place of residence, a family and social network, a job, roots in the community. A judge is much less likely to find that a migrant meets these requirements than an Italian.

66. In the juvenile justice system, in which alternatives to imprisonment are particularly developed, the difference in treatment between Italians and foreigners is so marked that some observers speak of a "two tier justice system" - focussed on education and rehabilitation in the case of delinquent Italian minors and on social defence and repression (and thus, incarceration) in the case of foreign minors. Statistics show that while foreign minors constitute about one quarter of the minors reported to the prosecution service, they are more than half the population of juvenile prisons.

67. A very high percentage of the minors imprisoned are Roma and Sinti. The situation is particularly dramatic among the female juvenile population: as of 31 December 2007, there were only five Italian girls detained in juvenile prisons, but 55 foreign girls. The Working Group observed during its visits to juvenile prisons that many, if not most, of the girls detained were Roma.

V. DEPRIVATION OF FREEDOM OF MIGRANTS AND ASYLUM-SEEKERS

68. In some respects, the answer of the Italian authorities and of civil society to the massive influx of human beings escaping from situations of never ending war, persecution or desperate poverty in search of a better life is generous. Thousands of men, women and children at risk of drowning are saved on the high seas every year, are taken to Italy, and given medical treatment, food and shelter, and information on the

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[8] See Andra Molteni and Alessandra Naldi, "Indagine sulle condizioni sociali, economiche e abitative delle persone detenute a Milano e delle loro famiglie", p. 35, available at http://www.caritas.it/documents/18/2746.pdf.

[9] Ibid. p. 36.

right to seek asylum. The Working Group will not examine the adequacy of the humanitarian response, nor will it address the strengths and weaknesses of the asylum procedure. It will focus on the question of deprivation of liberty in centres hosting asylum-seekers and migrants.

69. There are currently three types of such facilities in Italy.

A. First reception centres

70. A foreigner who enters Italian territory or Italian waters avoiding border controls is taken to a reception centre (*Centro di Accoglienza*, CDA) to be provided medical aid, to be given shelter, to be identified and to be informed about asylum procedures. The most well-known of the CDAs is the one on Lampedusa. The Working Group visited two CDAs in Eastern Sicily which receive mostly persons transferred there from Lampedusa, but also persons who landed directly on the coast of Sicily.

71. If the newly arrived foreigner does not file a request for asylum, the police will notify him a decision "rejecting" his entry. He will either be repatriated or, if this is not possible because he has no documents or the consular authorities of his country of origin do not cooperate, he will be transferred to an Identification and Expulsion Centre (CIE, see below) or released with an order to leave Italy.

72. If the foreigner files a request for asylum, the procedure to examine the request is started. Within a period ranging from a few days to more than a month, the foreigner will receive a document certifying his or her status as an asylum-seeker (the so-called "modulo C3" or "attestato nominativo") and will be transferred to a Centre for Asylum-Seekers (CARA). Before that identity document is issued, the asylum-seeker is not allowed to leave the CDA. For all practical purposes, he is detained. Neither the legislation governing these reception centres nor any other law provide that the asylum-seeker shall be deprived of his freedom until the document certifying his status is issued. There is no procedure leading to this deprivation of liberty, nor any decision adopted. In other words, for a period varying between a few days and more than a month, the asylum-seeker is de facto detained without a cognizable legal basis and thus arbitrarily.

B. Centres for asylum-seekers

73. Once the asylum-seeker has been issued the document certifying his status he is transferred to a CARA. In fact, this is often the same facility as the CDA, as the CARAs are frequently full. What changes is the asylum-seeker's freedom of movement. He can now leave the centre every day from 8 a.m. to 8 p.m. The authorities pointed out to the Working Group that the asylum-seekers are not really restricted in their freedom, as they are free not to return to the CARA in the evening. A failure to stay at the CARA will, however, have negative repercussions in the asylum proceedings.

74. The asylum-seeker will initially stay in the CARA for 35 days, during which the competent commission should have decided on the asylum claim. If the claim is rejected and the asylum-seeker appeals the decision to a court, he or she will stay in the CARA until the court decides on his appeal, up for a maximum six months.

C. Identification and expulsion centres

75. Identification and Expulsion Centres are facilities hosting foreigners who have received an expulsion order for the purposes of securing their presence while their identity is established, travel documents are issued in cooperation with the consular authorities of the country of origin, and a deportation is organized.

76. Detention in a CIE is ordered by the police chief. Within 48 hours, the detainee has to be brought before a justice of the peace,[10] who will hold a hearing in the presence of the detainee and his lawyer (often an ex officio lawyer). The initial order for detention is for 30 days, which can be renewed for another 30 days. The decisions of the justice of the peace can be appealed to the Cassation Court (there is no intermediate appeal to a tribunal). If after 60 days the detainee has not been deported to his country of origin, he will be released with an order to leave the country on his own motion within five days. Only a few foreigners actually comply with the order to leave Italy on their own motion, although the failure to comply constitutes an offence.

77. In many, if not most, cases the authorities face considerable difficulties in obtaining travel documents and organizing the deportation of the detainee within sixty days. This is allegedly due both to the detainees providing false or no information on their identity (in the hope of being released after 60 days) and also to a lack of cooperation on the side of the authorities of some of the countries of origin. As a consequence, the government has announced legislation which will considerably extend the maximum length of detention in the CIEs. Initially, it was announced that the maximum duration would be brought to 18 months (from currently two months!), but it appears that current plans envisage an intermediate solution.

78. The notion that an increase of the length of permissible detention in the CIE will increase the chances of the authorities to establish the identity of irregular migrants held at the CIE and to carry out the deportation is both reasonable and supported by statistical data related to the extension of the duration of CIE detention from 30 to 60 days in 2002. Detention in the CIE, however, must comply both with the general prohibition on arbitrary detention and be protected by sufficient procedural safeguards in accordance with Article 9 (4) ICCPR. There are several concerns in this respect.

79. First, the Working Group noted that many of the detainees in the CIEs were held there after serving a prison sentence. Persons who have been in prison for several months or years are thus, following their release from prison, detained for the purposes of identification and expulsion. There is no reason why the authorities could not establish these detainees' identity and obtain travel documents for their deportation while they were in prison and thus avoid this additional period of detention. A further negative consequence is that those CIE detainees who have committed no offence are held together with (often hardened) criminals. The Government has taken steps aimed at ensuring the early establishment of the identity of imprisoned foreigners. At the time of the Working Group's visit, however, these measures appeared not have fully achieved their goal yet, as convicts continued to constitute a substantial part of the CIE population.

80. Second, there is nothing in the law requiring the authorities to take into account whether the expellee is cooperating with the authorities or contributing to the difficulties in carrying out the expulsion through his or her own conduct. This should be a criterion in deciding whether to order detention in a CIE and for how long.

81. Third, the Working Group noted that many of the CIE detainees (in Milan more than half) were detained for the second, third or fourth time. They had been released after a previous sixty-day detention had not been sufficient to organize their deportation and subsequently re-apprehended. The law and the

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[10] Judges of the peace are not professional judges, but qualified lawyers appointed by the Superior Council of the Magistracy to sit as the lowest level of the judicial hierarchy on minor civil and criminal cases. In the criminal justice system, justices of the peace can impose only pecuniary sanctions, not detention.

authorities' practice appear to not to take sufficiently into account that in some cases it is apparent from the outset that the deportation will not be feasible and that the detention therefore serves no purpose.

82. Fourth, a recent legislative amendment provides that where a CIE detainee files an asylum claim he or she shall continue to be held in the CIE while his claim is processed. This constitutes an exception to the well-established rule that asylum-seekers should not be detained. While it is understandable that the authorities wish to curtail abuse of the asylum procedure by detainees seeking release from a CIE, some asylum-seekers might not have filed their claim previously for a number of good reasons.

83. In light of the above, the Working Group finds it of concern that the judicial review over detention in CIEs, while formally complying with the requirement in Article 9 (4) ICCPR, appears to be in most cases an empty formality. The Working Group reached this conclusion on the basis of its discussions with police authorities, justices of the peace, civil society representatives and CIE detainees, and having witnessed a few hearings before a justice of the peace. The non-governmental organizations managing the centres are required to provide legal advisory services to the asylum-seekers and expellees, but the quantity and quality of legal advice available appears to vary widely from one centre to the other. The ex-officio lawyers assisting CIE detainees appear often not to be very engaged and effective. In one centre visited, the justice of the peace would order the 30-day extension automatically upon request of the police without holding a hearing. It is striking to consider that in the criminal justice system decisions on remand detention are taken by professional judges and appealable to a tribunal composed of three professional judges, while the administrative detention of migrants is only reviewed by a single justice of the peace.

84. In 2006, the Government established a Commission to examine the situation of the centres for persons awaiting expulsion and to make proposals for improving them, their management and the legal framework in which they operate. Many of the concerns expressed by the Working Group were also voiced in the final report by this Commission (referred to as "De Mistura Commission" after the UN official appointed by the Government to head it). Regrettably, the proposals the De Mistura Commission made to address these concerns have not been implemented. The Special Rapporteur on the rights of migrants also made recommendations addressing some of these matters in her report on the visit to Italy four years ago.[11]

VI. JUVENILE JUSTICE

85. The Law on Criminal Proceedings against Accused Minors was enacted in 1988. The Working Group considers that it is a noteworthy example of implementation of the principles in Article 40 (3) and (4) of the Convention on the Rights of the Child. Some aspects deserve to be particularly highlighted.

86. The law institutes specialized prosecutors for offences committed by minors and special courts dealing with both criminal and civil matters regarding minors. These courts are composed of two professional judges and two lay judges with specific expertise (educators, psychologists, sociologists or lawyers).

87. Regarding precautionary measures pending trial, the law provides for a spectrum of alternatives to remand custody aimed at ensuring that the minor's ongoing education or vocational training is not interrupted: orders, home arrest (except for education or work activities), placement in a home for juveniles in contact with the law.

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[11] Report of the Special Rapporteur on the human rights of migrants, E/CN.4/2005/85/Add.3, para. 106.

88. Minors arrested by the police are not held at a police station while the juvenile court decides on whether any and, if so, which precautionary measures should be adopted pending trial. They are taken to a Reception Centre (CPA), where they can be held for up to 96 hours. In these centres, which have the appearance of an apartment and not of a prison, the juvenile is assessed by a team which will submit a report to the juvenile court on the personality and social background of the minor.

89. Probation can be granted not only after a guilty finding, but also before and during trial. In the latter case, the juvenile court will suspend the criminal proceedings on the basis of the commitment by the minor to a "plan" which comprises educational goals or work, as well as steps to repair the harm caused to the victim of the offence. If the minor complies with the commitments entered into and does not reoffend, the criminal case against him or her will be filed without even going to trial.

90. Only a very small part of the minors reported for offences end up in juvenile prisons. In 2005, of the 40,364 minors reported to the juvenile prosecutors' offices only 1,489 entered a juvenile prison (either on remand or as convicts), while 1,926 were referred to homes for children in contact with the law. 13,901 were under one form of supervision by the social services or the other.

91. In prisons for minors, the Working Group observed a very high ratio of educators per incarcerated juvenile and the intense program of educational and social activities offered to the detainees, also with the support of civil society.

92. Although pro bono work by civil society organizations plays an important role, the financial costs of a juvenile justice system such as Italy's are significant. Some persons the Working Group spoke to are concerned that the juvenile justice system will suffer deep budgetary cuts in the coming years. These cuts, it is feared, would undermine the current model and force a sharp reduction of the activities aimed at the rehabilitation of the detainees, as well as of the possibility to effectively offer alternatives to imprisonment for children in conflict with the law.

93. As already discussed above (paras. 66 and 67), a further concern with regard to the juvenile justice system is that foreign minors benefit from the ideas underlying the law (and the principles enshrined in Article 40 (3) and (4) CRC) to a much lesser extent than Italians. The department for juvenile justice in the Ministry of Justice is aware of this problem, but has not yet been able to identify the means (ideas, programs and financial means) to overcome the challenge posed by foreign juvenile offenders, some of them unaccompanied minors, who are not rooted in any community, do not attend any school or vocational training, and might even have no family at all in Italy.

VII. DEPRIVATION OF LIBERTY OF PERSONS WITH MENTAL HEALTH PROBLEMS AND OF "DANGEROUS" PERSONS

A. Obligatory mental health care

94. In 1978, Law No. 180 (referred to as "Basaglia's law" after the psychiatrist whose ideas underlie it) and the subsequent Law No. 833 on the national health service brought about a radical change in the treatment of persons with mental disabilities. Previously, persons with mental health problems were interned in insane asylums on the basis of a judicial finding that they were "dangerous for themselves and others and constituted a public scandal". The intention of the reform was to reduce drugs treatment and restraints and strengthen the patients' human relationships with doctors, nurses and - particularly - their communities. The law ordered the closing of insane asylums (which was completed only in 1994) and charged local health care units with providing treatment. Where a person with mental health problems does not voluntarily undergo health care, he or she can be subjected to "obligatory health care"

(*trattamento sanitario obbligatorio, TSO*). The criterion for subjecting a person to TSO is no longer the person's "dangerousness" but an assessment of this or her medical needs.

95. Obligatory health care measures are recommended by a medical doctor, ordered by the mayor (as highest administrative authority at the local level), and carried out in hospitals or local health care facilities. The initial order for TSO can last up to seven days. It can be renewed, but the renewal has to be approved by a judge. Obligatory health care can imply a measure of deprivation of liberty, as the patient subjected to it is not free to leave the psychiatric hospital in which he or she is being treated.

96. The Working Group visited one psychiatric hospital and interviewed patients, doctors and a representative of the association of family members of mental health patients. The atmosphere was that of a hospital and there was no apparent difference in treatment between the (minority of) patients undergoing obligatory treatment and those who were voluntarily committed to the hospital. There were no apparent restraints on the patients' freedom of movement.

B. Internment in a judicial psychiatric hospital

97. On the criminal justice side, if a court acquits finds a defendant to have committed an offence but acquits him or her on grounds of insanity it may order internment in a judicial psychiatric hospital (OPG) as a "security measure". The Criminal Code establishes, depending on the gravity of the offence, the minimum duration of the security measure, which varies from two to ten years. Once the duration of the "security measure" imposed in the judgement has expired, a judge will assess whether the person still constitutes a danger to the community and, if so, will order an additional period of detention in the OPG. There is no limit to the extension of this deprivation of liberty which, it is important to stress, is not based on the gravity of the internee's past conduct, but on an assessment of the future risk he or she poses.

98. The Working Group visited one of the five OPGs in Italy. It was, in appearance and for all practical purposes, a prison with a reinforced presence of mental health professionals. In addition to internees who were found not responsible on grounds of insanity, the OPGs also host persons on trial who, because of their mental health situation, are kept on remand in an OPG instead of a prison, convicts who developed a mental health problem after conviction, and persons under observation.

C. Other "security measures"

99. Internment in an OPG is not the only security measure provided for in the Criminal Code. The Code also provides, e.g., for the internment in "custody and treatment homes" of persons with reduced criminal responsibility on grounds of insanity. In practice, however, since 1930, when the Criminal Code was enacted, these "custody and treatment homes" were never built and the persons sentenced to internment in such a facility are detained in OPGs. On paper, they are held in special wings within the OPG. In the OPG the Working Group visited, the two categories of internees were held together. The Working Group spoke with one detainee who was supposedly in a "custody and treatment home". The judgement in his case specifically stated that he should be interned for three years in a "custody and treatment home" as he was not as dangerous as to require internment in an OPG - but there he was.

100. The Criminal Code further allows the judge to impose internment in a "work house" or "agricultural colony" as a security measure to be served after completion of a prison sentence, when he finds that the defendant, being a habitual criminal, will remain a danger to the community also after having served the prison term imposed. As a result, the defendant will serve a fixed prison term and then start a period of security internment.

101. To sum up, in the system of places of internment for persons subjected to security measures, about 1,700 persons are detained not as a fixed-term sanction for past actions, but to open-endedly protect the community from the danger they might pose at liberty. While the system is provided in the Criminal Code, the Working Group has the impression that security measures are not always handled with the rigorous respect for legality required for all measures resulting in the deprivation of a person's liberty.

VIII. EXISTING HUMAN RIGHTS OMBUDSMAN INSTITUTIONS AND THE NEED FOR A NATIONAL HUMAN RIGHTS INSTITUTION

102. Italy does not have a national human rights institution. There is a patchwork of local ombudsman institutions for the rights of detainees established in recent years through ad hoc initiatives at the regional, provincial or municipal level. While the work of the currently existing ombudsman institutions gives a significant contribution to the protection of the rights of persons deprived of their liberty, the system has considerable weaknesses.

103. The mayors and city, provincial or regional councils establishing the Ombudsman institutions have no powers under Italy's constitutional system with regard to detention matters, except for prison health care. As a consequence, they cannot attribute powers of access to detention facilities to the ombudsman. The ombudsman the Working Group spoke to enjoy de facto good cooperation with the prison administrations, but this cooperation is extended to them on the same basis as it is extended to non-governmental organizations and could be denied at any time. The ombudsman of Lazio region is the only one who has been able to gain access to Identification and Expulsion Centres. In the rest of Italy, these centres were at the time of the visit not accessible to the ombudsman institutions. Police holding cells are not visited by the Ombudsman either.

104. A further serious drawback of the fact that the ombudsman institutions are created by local government authorities is that they address their reports to bodies, such as a provincial or regional council, which have no power to take remedial action on most matters the Ombudsman might bring to their attention.

105. Finally, as the establishment of ombudsman for detainees' rights is left to local initiatives, the level of coverage and thus protection is very unequal. The Milan Province ombudsman, for instance, is provided the means to employ two staff, while the Lazio ombudsman institution has twenty staff (and was, until recently, supplemented by a Rome city ombudsman for the rights of detainees, whose mandate was not renewed by the new mayor of the Capital).

IX. CONCLUSIONS

106. The Working Group finds that safeguards against illegal detention in the criminal justice system are numerous and robust. Situations of arbitrary detention can, however, result from the unreasonable length of criminal proceedings and from excessive recourse to remand detention. Immigrants are seriously over-represented among the prison population.

107. The Government has declared organized crime of the mafia type, the threat of international terrorism, and criminality by irregular migrants to constitute public security emergencies and has responded to each of them by adopting extraordinary measures. Some of the extraordinary measures adopted to face these challenges carry with them a considerable risk of resulting in arbitrary detention.

108. The system for administrative detention of migrants and asylum-seekers does not result in overall excessive deprivation of liberty. There are, however, weaknesses in the legal basis and procedural safeguards of the system and incongruities which need to be rectified to avoid arbitrariness.

109. Finally, regarding the deprivation of liberty of persons with mental health problems, the reform of the health care laws which abolished closed institutions has not been reflected in similar reforms regarding judicial psychiatric hospitals. The system of open-ended "security measures" for persons considered "dangerous" on the basis of mental illness, drug-addiction or otherwise might not contain sufficient safeguards.

X. RECOMMENDATIONS

110. **On the basis of its findings, the Working Group makes the following recommendations to the Government.**

111. **The Government should, as a matter of priority, put in place legislative and other measures to decrease the duration of criminal trials with a view to ensuring better protection of the right to be tried without undue delay.**

112. **Similarly, measures should be taken to reduce the share of prisoners awaiting final judgement, whether by expediting trials, stricter application of the principle that remand detention is a last resort, or both.**

113. **Incidents of police brutality against arrestees should be thoroughly investigated and those responsible held accountable.**

114. **Any reform to the special detention regime under article 41 bis of the Law on the Penitentiary System should aim at strengthening and expediting judicial review of the orders imposing or extending this form of detention, not to make it less incisive. The Government should also consider ways to ensure that reformation and social rehabilitation of the offender, which are essential aims of imprisonment according to both article 10 ICCPR and article 27 of the Italian Constitution, are not sacrificed to public security concerns.**

115. **The Government should refrain from any further deportation of persons suspected of terrorist activities to countries where they are at risk of arbitrary detention and torture. Judicial remedies against expulsion should have suspensive effect in all cases.**

116. **The Government should adopt measures to increase the access to alternatives to imprisonment for immigrants in conflict with the law, both in the adult and in the juvenile justice systems.**

117. **Legislation making non-compliance with immigration laws punishable by imprisonment (or as an aggravating circumstance) should be reconsidered.**

118. **Italy should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

119. **The Government should implement the proposals made in the De Mistura report with regard to centres holding asylum-seekers and migrants.**

120. **With regard to first reception centres for asylum-seekers (CDAs), the deprivation of liberty in them, at present de facto, needs to be provided with a legal basis. If the detention of asylum-seekers in CDAs until the issuance of the document certifying their status as asylum-seekers is maintained, it must be limited by strict and tight timelines.**

121. **Detention in Identification and Expulsion Centres should be based on more careful examination of the individual case on the basis of criteria enshrined in law. Where a person files an asylum claim while detained in a CIE, continued detention in the CIE should not be automatic. Measures to promote the voluntary repatriation of expellees should be given more consideration. Where the expulsion of a migrant is ordered by a criminal court, preparations for the deportation should be carried out while the migrant is in prison, to avoid detention in a CIE. Legal aid to persons detained in CIEs should be strengthened.**

122. **The Government should continue providing the means which are necessary for the juvenile justice system to function in accordance with the principles enshrined in the juvenile justice legislation and Article 40 (3) and (4) of the Convention on the Rights of the Child.**

123. **The Government should consider reforms of the Judicial Psychiatric Hospitals in line with the 1978 reforms of the mental health care institutions. The principle whereby "persons who are found to be insane shall not be detained in prisons" (Rule 82 of the UN Standard Minimum Rules for the Treatment of Prisoners) should be given full effect.**

124. **The Government should give priority to the establishment of a national human rights institution in accordance with the Paris Principles, in particular with full and unfettered access to all places of detention.**

Appendix

List of facilities visited

Rebibbia “New Facility” male prison, Rome

Rebibbia female prison, Rome

Poggioreale prison, Naples

Penal Institute for Minors, Nisida (Naples)

Ministerial Community Home for Juvenile Offenders, Nisida (Naples)

Penal Institute for Minors “Cesare Beccaria”, Milan

First Reception Centre (for juvenile offenders), Milan

Naples State Police Headquarters (Questura)

Carabinieri Corps facility Porta Garibaldi, Milan

Judicial Psychiatric Hospital, Secondigliano (Naples)

Mental Health Department of San Giovanni Hospital, Rome

First Reception Centre for Asylum Seekers (CDA), Pian del Lago (Caltanissetta)

First Reception Centre for Asylum Seekers (CDA), Cassibile (Siracusa)

Reception Centre for Asylum Seekers (CARA), Pian del Lago (Caltanissetta)

Identification and Expulsion Centre (CIE), Pian del Lago (Caltanissetta)

Identification and Expulsion Centre (CIE) of via Corelli, Milan

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