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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Grupo de Trabajo sobre la Detención Arbitraria

Adición

Misión de seguimiento a Italia*

Resumen

El presente informe contiene las conclusiones y recomendaciones del Grupo de Trabajo sobre la Detención Arbitraria, tras su visita a Italia del 7 al 9 de julio de 2014. La visita tenía por objeto evaluar los progresos realizados por el Gobierno de Italia en la aplicación de las recomendaciones formuladas en el informe del Grupo de Trabajo (A/HRC/10/21/Add.5) a raíz de su visita a Italia en 2008. El Grupo de Trabajo agradece al Gobierno que lo haya invitado a realizar una visita de seguimiento, y destaca que esto constituye una buena práctica y un ejemplo a seguir para otros Estados en el marco de su cooperación con los procedimientos especiales del Consejo de Derechos Humanos de las Naciones Unidas.

El Grupo de Trabajo celebra las medidas adoptadas por el Gobierno para aplicar sus recomendaciones, en particular las reformas legislativas. Se siente alentado por el diálogo abierto y basado en derechos emprendido por los poderes legislativo, ejecutivo y judicial sobre la cuestión de la detención arbitraria, y observa que existe, a diferentes niveles, un reconocimiento claro de la necesidad de intensificar la labor en diversas esferas para prevenir la privación de libertad arbitraria.

A pesar de estos avances positivos, sigue siendo preocupante el elevado número de detenidos en prisión preventiva y, por consiguiente, el problema de hacinamiento en el sistema penitenciario. Además, es necesario vigilar y rectificar el recurso desproporcionado a la prisión preventiva en el caso de extranjeros y romaníes, en particular los menores.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en el que se presentó.

Al tiempo que observa que Italia, a diferencia de otros países europeos, no tiene una política general de detención obligatoria de todos los solicitantes de asilo y migrantes en situación irregular, el Grupo de Trabajo celebra la reciente eliminación de la migración como circunstancia agravante en el derecho penal y las medidas adoptadas por el Parlamento para eliminar el delito de "entrada y estancia ilegales". Si bien observa con reconocimiento que la duración máxima de la detención administrativa en los "centros de identificación y expulsión" se ha reducido recientemente de 18 a 3 meses, el Grupo de Trabajo sigue preocupado por las condiciones de detención en esos centros. También expresa su preocupación por la presunta existencia de devoluciones sumarias de personas, algunas de ellas menores no acompañados y solicitantes de asilo adultos, en el contexto de acuerdos bilaterales de readmisión, principalmente por la falta de mecanismos que determinen la edad o les informen de sus derechos o por las deficiencias de dichos mecanismos.

El Grupo de Trabajo señala que el régimen de detención especial de los delincuentes mafiosos, previsto en el artículo 41 *bis* de la Ley del Sistema Penitenciario, no se ha puesto todavía en conformidad con las obligaciones internacionales en materia de derechos humanos. Sería necesario reforzar y agilizar debidamente el control judicial de las órdenes que imponen o amplían esta forma de detención. Con respecto al sistema psiquiátrico, el Grupo de Trabajo recomienda al Gobierno que dé prioridad a las propuestas de reforma encaminadas a cerrar los hospitales penitenciarios psiquiátricos y transferir sus competencias a estructuras regionales sustitutivas de atención de la salud.

El Grupo de Trabajo formula varias recomendaciones al Gobierno y subraya que es necesario que en la siguiente fase este adopte medidas rápidas y sostenidas para asegurar el cumplimiento de las normas de derechos humanos.

Anexo

[Inglés únicamente]

Report of the Working Group on Arbitrary Detention on its follow-up visit to Italy (7–9 July 2014)

I. Introduction

1. The Working Group on Arbitrary Detention conducted a follow-up visit to Italy from 7 to 9 July 2014, at the invitation of the Government of Italy. The purpose of the visit was to evaluate the progress made by the Government with respect to the implementation of recommendations contained in the Working Group's report following its visit to Italy from 3 to 14 November 2008 (A/HRC/10/21/Add.5). The Working Group is grateful to the Government for this invitation to conduct a follow-up visit and emphasizes that it constitutes a good practice and an example for other States to follow.

2. During the visit, the Working Group met with various officials from different government agencies, including with the Under-Secretary of State of the Ministry of Foreign Affairs, the Under-Secretary of State and officials of the Ministry of the Interior, officials from the Ministries of Justice and Health and representatives of the Interministerial Committee on Human Rights. The Working Group also had meetings with the First President of the Court of Cassation, representatives of the Constitutional Court, the Chair of the Parliamentarian Committee of Human Rights of the Chamber of Deputies and representatives of the Parliamentarian Senate. The Working Group also met with representatives of United Nations agencies, for example, the International Organization for Migration (IOM), and of civil society organizations. The Working Group further met with the Prefect on the island of Sicily.

3. The Working Group would like to thank the Government for its openness and availability for meetings, and particularly the Interministerial Committee on Human Rights for its support. In Palermo and Trapani on the island of Sicily, the Working Group visited places where persons were deprived of their liberty. The Working Group expresses its gratitude to the Government for allowing the delegation unimpeded access to places of detention and to conduct private and confidential interviews with detainees of its choice, in accordance with the terms of reference for fact-finding missions by special procedures mandate holders.

4. The Working Group shared its preliminary findings with the Government at the close of the follow-up visit. On 17 April 2015, it sent an advance preliminary version of the present report to the Government.

II. Status of the implementation of the recommendations contained in the report on the 2008 visit of the Working Group to Italy (A/HRC/10/21/Add.5)

5. An analysis is presented below of the implementation of the recommendations made in paragraphs 111 to 124 of the report of the Working Group following its visit to Italy from 3 to 14 November 2008.

A. Length of criminal proceedings and excessive recourse to pretrial detention

6. In its 2008 report, the Working Group noted that, although safeguards against illegal detention in the Italian criminal justice system were numerous and robust, situations of arbitrary detention could result from the unreasonable length of criminal proceedings and from excessive recourse to remand detention.

7. In its follow-up replies to the country visit report, the Government informed the Working Group of a number of recent regulatory changes designed to limit the use of remand in custody. Such measures include Act No. 9/2012, adopted with the aim of reducing prison overcrowding; Law-Decree No. 78/2013, as converted into law by Act No. 94/2013, whereby the required limit for the applicability of the precautionary measure of custody in prison was raised from 4 to 5 years; Act No. 199/2010, which introduced a new regulation aimed at enforcing prison sentences in premises other than prison facilities, i.e. the home of the offender or other public or private care centres falling within the definition of residence and abode; and Law-Decree No. 146/2013, which provides for, inter alia, a special early release. Recently, Law No. 47/15 entered in force, by which several amendments into the Criminal Procedure Code and the Penitentiary Act (Law No. 354/1975), the most important of which are the following:

- In case of risk of absconding or recidivism, the precautionary measures can be applied only when the risk is current and concrete; the risk cannot be presumed from the seriousness or the type of the crime
- Pretrial detention can be ordered only when other measures, coercive or precautionary, are not adequate; it is possible to apply both coercive and precautionary measures at the same time
- The judge must not assess whether it is possible to apply alternative measures instead of pretrial detention when the proceeding concerns seditious conspiracy, terroristic conspiracy or mafia conspiracy
- When the judge orders pretrial detention, he must indicate the specific reasons for which house arrest or electronic tag are not to be granted in the case in question
- When the accused breaches house arrest, the judge can order the withdrawal of the house arrest, except in cases of lesser relevance
- Strict rules have been adopted regarding both the pretrial detention motivations and the deadlines for taking a decision by the Court of Review; if such requirements are not respected, the pretrial detention loses effectiveness
- The right of detainees to receive visitors has been extended to seriously handicapped sons or daughters, in addition to sons or daughters whose lives are in danger or who are affected by a serious illness

8. Legislative Decree No. 28/2015, implementing Law No. 67/2014, added article 131 bis to the Criminal Code. This article establishes that the defendant cannot be punished if the maximum penalty for the crime does not exceed five years of imprisonment and the judge considers the committed actions not socially dangerous, because the offense is not serious and the defendant's behaviour is not persistent. The Government pointed out that Law No. 117/2014, which converted Law-Decree No. 92/2014, introduced several exceptions to the general rule of the exclusion of the pretrial detention when the established penalty does not exceed three years of imprisonment. In fact, the judge cannot apply such a general rule when (a) the crimes concerned are domestic violence or stalking; (b) other grave crimes are concerned, as established in article 4 bis of Law No. 354/195; (c) when, according to the advice of the judge, all other precautionary measures are inadequate; and (d) when there is not an adequate domicile to allow house arrest. The Working Group also notes with interest that a draft law on amendments to the Code of Criminal Procedure relating to appeals to the Court of Cassation (third level of

adjudication) was submitted to the Chamber of Deputies in March 2013 in order to ensure the principle of reasonable duration of the criminal proceedings.

9. According to the Government, preventive custody in prison is taken as a measure of last resort (art. 275, para. 3, of the Criminal Procedure Code) under the strict circumstances provided for in art. 273 of the Criminal Procedure Code. Preventive custody in prison can be imposed only as a last resort if there is clear and convincing evidence of a serious offence. However, preventive custody is not permitted for pregnant women, single parents of children under the age of 3, persons over the age of 70 or those who are seriously ill.

10. In the course of its visit, the Working Group was encouraged by the open and rights-based dialogue in the legislative, executive and judicial branches on issues of arbitrary detention. It was also informed of further measures undertaken by the Government to implement its recommendations.

11. Such positive measures include the recent reforms to reduce the length of sentences, overcrowding in the penitentiary establishments and the use of pretrial detention. According to article 8 of Decreto legge 92/2014, pretrial detention cannot be applied in cases where the judge considers that the defendant, if found guilty, would be sentenced to three years or less or given a suspended sentence. The Working Group is of the view that this would reduce the inappropriate use of pretrial detention as a penalty.

12. The Working Group also notes the positive measures in the criminal justice system, including the Constitutional Court's judgement to relax the indiscriminately higher penalties for minor drugs offences, which, followed by recent legislation, have given effect to the requirement of proportionality, as stated in international human rights law. The same applies to the relaxation of the disproportionate penalties for repeat offenders or recidivists.

13. Notwithstanding these positive measures, the Working Group remains concerned with regard to the high number of pretrial detainees. A large number of people are remanded in custody after being charged instead of being released on bail. Figures before the Working Group indicate that pretrial detainees make up approximately 40 per cent of the prison population. In this respect, the Italian authorities indicated that the statistics for "accused prisoners" include those who have already been convicted and whose judgement has not yet become final.

14. As a consequence, prison overcrowding and substandard prison conditions remain major problems in Italy. According to the Ministry of Justice, as at 14 October 2013, there were 64,564 people in prison. Officially, there were 47,599 available places but, in reality, an average of 4,500 of these could not be used owing to the need for repairs.[1] The Working Group notes with concern that Italian prisons are among the most crowded in the European Union, with occupancy close to 140 per cent of capacity.

15. The Working Group also notes with concern the large proportion of foreigners in Italian prisons. These account for 35 per cent of the total, partly owing to the high rate of drug arrests in a country that is a corridor for the narcotics trade. Nearly 40 per cent of convicts in Italy are serving time for drugs offences. The Working Group thus reiterates that there is a need to monitor and remedy the disproportionate application of pretrial detention in the case of foreign nationals and Roma, including minors.

16. In January 2013, in the *Torreggiani* judgement, the European Court of Human Rights held that Italy had violated article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, on the prohibition of torture and inhuman or degrading treatment, by subjecting detainees to conditions involving "hardship of an intensity exceeding the unavoidable

[1] See http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/02/audiz2/audizione/2013/10/17/indice_stenografico.0003.html# (website available in Italian only).

suffering inherent in detention".[2] The Court found that the hardship was caused by the overcrowding of cells and the lack of sufficient living space, and that overcrowding in Italian prisons amounted to a structural and systemic problem.

17. The Court concluded that the Government must put in place, within one year from the time the judgement became final, an effective domestic remedy or a combination of such remedies capable of affording adequate and sufficient redress in cases of overcrowding in prisons. It did so on 27 May 2013.

18. The authorities have since taken some measures to address the issues raised by the Court. In particular, the adoption of Law 94/2013, which decreases the use of pretrial detention, increases the possibility of a reduced prison term and also increases the options for detainees to carry out public utility work outside prison. The Working Group notes the presentation of a number of bills proposing alternative penalties to detention, as suggested by the Court, and the creation in June 2013 by the Minister of Justice of a commission to advise on overcrowding in prisons. The construction of extra places was reportedly also planned.

19. At its 1193rd meeting, on 6 March 2014, the Committee of Ministers of the Council of Europe, considering the execution of the Torreggiani judgement, expressed concern that the measures the Government was planning would not be adequate and "strongly urged the Italian authorities to take concrete steps to put in place a remedy or combination of remedies with preventive and compensatory effect affording adequate and sufficient redress in respect of Convention violations stemming from overcrowding in Italian prisons by the deadline set", namely, 27 May 2014. With regard to the Torreggiani judgement, the Government pointed out that new remedies, both preventive and compensatory, had been introduced by Italy, as requested by the European Court of Human Rights. Law-Decree No. 146/2013 of December 2013 lays down a new preventive remedy allowing detainees to complain about any violation of their rights to a supervisory judge. This remedy can provide redress for detention in conditions contrary to article 3. For example, the judge has the power to order the transfer of an applicant out of an overcrowded cell. Legal means are now also available to enforce such an order if it is not executed by the penitentiary authorities. Law-Decree No. 92/2014, which came into force on 28 June 2014, establishes a new compensatory remedy. Accordingly, a detainee may apply to a supervisory judge for a reduction of the sentence that remains to be served, namely, 1 day of reduction, for every 10 days spent in detention conditions that did not comply with article 3 of the Convention. Persons already released can apply to the civil courts for pecuniary compensation in the amount of 8 euros for every day spent in detention conditions that did not comply with article 3 of the Convention. The pecuniary compensation remedy applies also to persons who have spent less than 15 days in such conditions or if the sentence to be served is shorter than the period that could be deducted. On 16 September 2014, the Court, taking into consideration the efforts made by the Government to establish preventive and compensatory remedies, delivered two decisions, *Stella v. Italy* and *Rexhepi v. Italy*, in which it indicated that the preventive remedy had appeared "a priori" accessible and had offered reasonable prospects of success. Concerning the compensatory remedy, the European Court found that, in principle, it constituted an appropriate remedy. Subsequent to these two judgements, about 3,500 pending cases on the same prison overcrowding issue were likewise declared not acceptable.

20. According to data published on the website of the Ministry of Justice, the overall number of people detained in prison on 31 August 2014 was 54,252 (791 of whom were serving their sentence on day release). A comparison with the statistical data previously released by the Government shows that the number of detainees is currently decreasing (there were 58,092 detainees as at 30 June 2014), as an effect of the other general measures recently adopted in criminal and penitentiary law.

[2] *Torreggiani and Others v. Italy* (application No. 43517/09). This was a "pilot-judgement", allowing the court to identify a structural problem underlying the violations and to indicate specific measures or actions to be taken by the respondent state to remedy them.

B. Special detention regime under article 41 bis of the Law on the Penitentiary System

21. The Working Group, in its 2008 report, referred to the declaration of the Government that organized crime of the mafia type, the threat of international terrorism and criminality by irregular migrants were public security emergencies. The Working Group noted that the Government had responded to each of these emergencies by adopting extraordinary measures, some of which carry with them a considerable risk of resulting in arbitrary detention.

22. According to the Government, the relevant legal framework has undergone significant changes since the Working Group's visit, with the adoption of an amendment to Section 41 bis of the Law on the Penitentiary System, commonly referred to as the special detention regime under Section 41 bis. The Law was amended by Act No. 94 of 2009, which strengthened the special detention regime, and new circulars were subsequently issued by the Department of Prison Administration. During the visit, the Working Group was informed that approximately 700 detainees had been subjected to this regime.

23. The Government, in its follow-up response, elaborated on this special detention regime. Procedurally, the provision applying the regime is adopted by the Minister of Justice; it has a duration of four years and can be extended for an additional period of two years. Complaints can be lodged within 20 days from the date of the communication of the provision, and its decision shall be made by the Supervisory Court of Rome. The restrictions of the Section 41 bis regime cannot be modified either by the administrative authority or by the judicial authority, since they are provided by the Penitentiary Law.

24. The Working Group notes with interest the Constitutional Court's decision No. 143 of 17 June 2013, in which it sanctioned the constitutional illegitimacy of the last sentence of article 41 (b), paragraph 2 (d), subparagraph (b), of Act No. 354 of 1975 (Penitentiary Act), as amended by Act No. 94/2009, which provided for limitations to interviews with defence counsels. Therefore, paragraph 2 (d), subparagraph (b) of article 41 (b) currently in force restricts only visits paid by prisoners' family members and cohabitants, and does not restrict interviews with their defence counsels.

25. Following the decision of the Constitutional Court, the Head of the Department of Penitentiary Administration prepared an amendment providing that prisoners' rights shall be clearly acknowledged in order to allow prisoners to have interviews with their defence counsels, even prisoners, without any authorization nor limitation of the number and duration of interviews, without the possibility to check the actual need or the reasons for the interviews and subject to the definition of the practical modalities of carrying out such interviews, including the setting of hours, the choice of premises and the identification of the defence counsel.

26. Notwithstanding this positive development, the Working Group notes with concern that the special detention regime for mafia offenders under article 41 bis of the Law on the Penitentiary System has not yet been brought in compliance with international human rights requirements. It became clear to the Working Group during its meetings with authorities that the Government had so far not undertaken any measures to sufficiently strengthen and expedite the judicial review of the orders imposing or extending this form of detention. At times, renewal of the orders would appear to be a rubber-stamping exercise and the restrictions are applied for several years at a time.

27. The Working Group emphasizes that a special security regime that entails severe restrictions on prisoners in terms of socialization with other inmates and contact with the outside world may have harmful effects, and even more so when the prisoners concerned are held under such conditions for prolonged periods. Therefore, in order to counteract potentially harmful effects, it is essential that a balance be struck between the legitimate interests of society and the provision of a regime that offers adequate human contact to the prisoners concerned.

28. The Working Group reiterates that any such restrictive measures must be reviewed on a regular basis in order to ensure their compliance with the principles of necessity and proportionality.

C. Detention of asylum seekers and migrants in an irregular situation

29. In its 2008 report, the Working Group noted that the Italian system for administrative detention of migrants and asylum seekers did not result in overall excessive deprivation of liberty. There were, however, weaknesses in the legal basis and procedural safeguards of the system and incongruities that needed to be rectified to avoid arbitrariness.

30. At the outset, the Working Group reiterates that Italy does not have a general policy of mandatory detention of all asylum seekers and migrants in an irregular situation, as opposed to some other European countries.

Legislative framework

31. The Working Group welcomes the recent abolition of migration as an aggravating circumstance in criminal law and the steps taken by the Parliament to abrogate the crime of "illegal entry and stay". Law No. 67 of 28 April 2014 (article 2) was passed by Parliament, requiring the Government to abolish the crime of irregular entry and stay within 18 months. The Working Group would appreciate an update as to the measures undertaken by the Government in this respect.

32. The Working Group notes with concern that the crime of irregular entry and stay remains an administrative offence and that irregular migrants re-entering the country following an expulsion will continue to face criminal sanctions.

33. The Working Group notes that the legal framework governing detention pending deportation has undergone important changes since its 2008 visit. In particular, Law No. 129 of 2 August 2011 increased the maximum period of detention, previously set at 60 days, to six months and the statutory maximum duration, under certain circumstances, to 18 months. Following its visit, the Working Group expressed its serious concern about the length of administrative detention, although it was encouraged by recent legislative initiatives to reduce the maximum period of detention of irregular migrants to 12, or even 6, months. Importantly, the Ruperto Commission report endorsed by the Minister of the Interior in 2013 had proposed that the maximum period of detention be reduced to 12 months.

34. At the end of 2014, the Parliament approved Law No. 161, which mandates the reform of immigration detention, thereby representing a radical change compared with the previous immigration policy. The Working Group notes that this reform constitutes a new starting point for Italy in its migration policy, but it is also an important model for the whole European Union, where, in recent years, the use of detention for reasons of immigration law enforcement has increased enormously, both in asylum and in removal proceedings.

35. There are two key points of this reform. The most relevant aspect is the reduction in the maximum period of migrants' detention within removal centres, with an additional reduction in the maximum time limit of detention provided for those migrants who have already served sentences in prison. With the new law, the maximum time a foreign national may be detained in an identification and expulsion centre has changed from 18 months to a strict limit of 3 months. This new maximum is reduced to 30 days if the foreign national has already spent three months or more in prison.

36. Moreover, the reform has replaced the system of judicial control on prolonged detention. The law now requires that after the initial 60 days, after the first extended detention period has expired, further time in an identification and expulsion centre has to be supported by concrete facts that demonstrate the probable identification of the foreign national or that continued detention is necessary to arrange his or her return. However, as mentioned above, even in such

cases, the maximum period of detention in such a centre cannot be for more than 90 days. This reform insists on a case-by-case evaluation, in compliance with the provisions set by the European Union Returns Directive.

37. The Working Group welcomes this recent reform. According to its jurisprudence, and in accordance with the principle of proportionality, migration-related detention should be used as a last resort and only for the shortest period of time, and alternatives to detention should be sought whenever possible. The Working Group thus urges the Government to take the necessary measures to reduce the length of the detention in the identification and expulsion centres to the period of time strictly necessary for the identification.

Conditions of detention in the identification and expulsion centres

38. Identification and expulsion centres are centres where migrants are sent in order to be fully identified and removed from the territory. If, at the expiration of the detention period in a Centre, the expulsion order cannot be executed, the Police Commissioner must release the foreigner and order them to leave the country within seven days. In the event that the individual does not comply and is apprehended by the police, they may be ordered to pay a fine of between 10,000 and 20,000 euros and can be detained in a new centre and subject to another removal order.

39. Italian law establishes minimum conditions for detention. Legislative Decree 286/1998, article 14.2, provides that detainees in identification and expulsion centres must be kept in a way that guarantees the necessary assistance and full respect of their own dignity. Presidential Decree 394/1999, article 21.2, further provides that detention centres should provide detainees with essential health services, activities for their socialization and freedom of worship. Furthermore, the Ministry of the Interior has developed guidelines that detail all services to be provided and items to be distributed in such centres.

40. The Working Group welcomes these overarching principles as they provide the necessary foundation for minimum conditions of detention in accordance with international law. Nevertheless, the lack of applicable nationwide standards appears to leave a large margin of discretion to centre managers, and the Working Group has received reports of degrading conditions in many identification and expulsion centres.

41. The Working Group visited the detention facility for migrants in Trapani, at the Milo identification and expulsion centre. This facility had previously been visited in 2012 by the Special Rapporteur on the human rights of migrants, who had expressed serious concerns about the highly militarized design of the recently constructed facility, with its high wired fences and cell-like conditions.[3] The Working Group found that the situation in this particular detention facility had significantly improved, both in terms of overcrowding and general living conditions. Such improvements were to a large extent attributable to the centre manager at the time of the visit.

42. The Working Group notes that, since 1 January 2012, the organizations involved in the so-called "Praesidium VII" project, namely, IOM, the Italian Red Cross, the Office of the United Nations High Commissioner for Refugees and Save the Children, with funding from the Ministry of the Interior and the Department for Civil Liberties and Immigration, have been acting according to their institutional mandates in the main migrant landing areas and government centres, and have been making themselves available for the hosts' needs. Within the framework of the above-mentioned project[4] the Italian Red Cross monitors health assistance standards and carries out, together with the health units operating in the facilities, interventions and/or procedures aimed at improving the health conditions of the inmates.

[3] See A/HRC/23/46/Add.3, para. 67.

[4] All of the organizations were partners of the Government in the implementation of the project, which aimed to improve the capacity and quality of reception of people potentially in need of international protection.

43. The Working Group found that a significant number of detainees in identification and expulsion centres were foreign nationals who had been convicted of criminal offences and subsequently remanded in these centres for the purposes of deportation after having served a prison term. While noting that the maximum period of administrative detention in the centres has been reduced to 30 days if the foreign national has already spent three months or more in prison, the Working Group nonetheless reiterates its call upon the relevant Italian authorities to take proactive steps to commence the necessary expulsion and deportation procedures prior to the scheduled release from prison, thereby avoiding the transfer of these individuals to identification and expulsion centres.

Summary returns

44. The Working Group notes with particular concern reports of summary returns of individuals, including in some cases unaccompanied minors and adult asylum seekers, in the context of bilateral readmission agreements, mainly due to inadequate or non-existing screenings that fail to determine age or to inform asylum seekers of their rights. Similar concerns were expressed by the Committee on the Rights of the Child in 2011.[5]

45. In addition, both the Council of Europe Commissioner for Human Rights, Nils Muižnieks, in September 2012, and the Special Rapporteur on the rights of migrants, Francois Crépeau, in May 2013, have urged Italy to refrain from summary returns to Greece, citing continuing concerns over the grave deficiencies in the asylum system of Greece.[6] However, the Government pointed out that Italy did not carry out summary returns to Greece. All the operational procedures carried out at borders by Italy had always been implemented on a case-by-case basis. Each migrant was properly identified and all personal details were managed by the authorities in order to monitor each individual case and the related assistance measures.

46. Italy has abandoned the "push back" practice and is strongly committed to and involved in search-and-rescue activities at sea, very often far beyond its area of responsibilities, ensuring the rescue of migrants and their delivery onto the Italian territory. Law No. 129/2011, translating Directive 2008/115/CE, has introduced a gradual expulsion mechanism on the basis of a systematic case-by-case analysis of the situation of each migrant to be repatriated. As a result, the repatriation of migrants is immediate where there is the risk of absconding or if the migrant in question is particularly dangerous or has submitted an unfounded or fraudulent application for a residence permit. Otherwise, the repatriation is granted to the foreign applicant, by fixing a specific period for voluntary departure from Italy. The Working Group recalls that such summary returns violate the obligations of Italy under national, European and international law to ensure access to a fair asylum procedure and protection against refoulement, as well as the prohibition of expulsion of unaccompanied minors.

Alternatives to detention

47. According to Italian law, unaccompanied children cannot be detained and are to be issued with a residence permit (Decreto Legislativo 286/98, article 19.2.a). Other vulnerable categories of migrants, such as victims of trafficking or asylum applicants, cannot be removed.[7] Other provisions further protect minors and pregnant women and their spouses, or parents of new born babies up to six months old. However, the Working Group notes that certain practical obstacles, including lack of cooperation of countries of origin of irregular migrants, statelessness and difficulties in the identification of persons subject to a removal, are other reasons for which these orders are not able to be carried out.

[5] See CRC/C/ITA/CO/3-4, paras. 63 and 64.

[6] See A/HRC/23/46/Add.3, paras. 50–55. Furthermore, the Special Rapporteur on the rights of migrants analysed the various bilateral cooperation and readmission agreements negotiated by Italy and its neighbours in paras. 43–55 of his report.

[7] See Legislative Decree 286/98, art. 19, para. 1.

48. The Working Group emphasizes that children and other vulnerable persons should not be detained pending resolution of their claims. Alternatives to detention should always be given preference. International evidence suggests that humane and cost-effective mechanisms such as community release programmes can be very successful.

D. Detention of persons in health facilities

49. Following its 2008 visit, the Working Group noted that, regarding the deprivation of liberty of persons with mental health problems, the reform of the health-care laws that abolished closed institutions had 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 other conditions might not contain sufficient safeguards.

50. According to the detailed follow-up response submitted by the Government, the process to overcome the judicial psychiatric hospitals started in 2008 with the Decree of the President of the Council of Ministers, which established the shifting of the responsibility of the penitentiary health-care service to the regions.

51. On 31 March 2015, judicial psychiatric hospitals were closed, in compliance with the deadline established by Law No. 81/2014. Since 1 April 2015, their competence has been transferred to regional health-care structures and the patients are now under the supervision of the community Mental Health Department, which provides an individual care programme. During the follow-up visit, the Working Group also examined these efforts to close the judicial psychiatric hospitals and transfer their competence to regional substitutive health-care structures. The Working Group regrets that the deadline for implementing the reform of the psychiatric system was postponed twice, but is encouraged by the fact that the most recent legislative initiative provides for an assessment of all individual cases, as well as strict reporting and monitoring requirements with regard to progress made.

E. Other issues

Incidents of police brutality against arrestees

52. As for the incidents of police brutality, the Government has provided follow-up information about a strong normative framework designed in order to ensure provisions adequate to the service performed by the police forces. The police forces are bound to the following duties: diligence, legality, correctness and loyalty. They are also duty-bound to additional specific obligations and prescriptions (See Act No. 121/81), which are reflected in the so-called disciplinary responsibility, along the lines of the military system. The disciplinary responsibility is linked with, and strongly aims at, ensuring the full compliance with the constitutional principles contained in article 97 of the Italian Constitution. Accordingly, the related sanctional system, being based upon the principle of the expeditiousness of the proceeding, is strictly linked to the disciplinary responsibility. Generally, each and every case/incident is duly and promptly investigated. The Bill introducing the specific crime of torture (A.S. n. 10-362-388-395-849-874-B) is under examination at the Italian Senate (second reading) since 21 April 2015. It comprises seven articles:

(a) Article 1, under which the crime of torture is designated as a common crime and will be included in the Criminal Code under article 613-bis;

(b) Article 2, under which some aggravating circumstances, including when this crime is committed by a public official, have been envisaged;

(c) Article 3, under which the incitement to torture is designated as a formal specific crime, when committed by public officials;

(d) Article 4, under which the statute of limitations has been doubled in the event of torture;

(e) Article 5, which provides for the inadmissibility in a penal judgement of the declarations extorted through torture, except when these declarations are to be used against the author of the torture itself;

(f) Article 6, which forbids the expulsion or the rejection of non-European Union citizens when it is deemed that, in their countries of origin, they could be exposed to torture;

(g) Article 7, under which no diplomatic immunity can be claimed for those foreign citizens investigated or condemned in their countries of origin on the account of torture.

53. The Working Group takes note of the information provided but regrets, however, that the Government has not submitted concrete and updated information on measures undertaken to increase police accountability. Information before the Working Group suggests that no such measures have been taken at the systemic level, despite ample evidence of the need for such measures, for example, following the investigations and judicial proceedings surrounding the abuses against demonstrators at the meeting in Genoa of the Group of Eight and numerous cases of deaths in custody and ill-treatment by police. There has reportedly been no progress to make identity badges compulsory for police officers, nor in strengthening and rendering more transparent the internal disciplinary system. There has also been no progress to ensure adequate training in the use of non-violent and non-lethal methods and when to resort, when strictly necessary and in a legitimate and proportionate manner, to the use of force.

Establishment of a national human rights institution

54. In the context of monitoring places of detention, the Working Group welcomes Italy's ratification in November 2012 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. One important corollary of the ratification of the Optional Protocol will be the establishment of a national preventive mechanism, with the mandate to conduct unannounced visits to detention facilities. The Working Group also welcomes the establishment of the office of National Guarantor of the rights of detainees.

55. The Working Group regrets that Italy has not yet established a national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights, despite the Working Group's previous recommendation and despite having accepted recommendations to this effect in the context of the universal periodic review. The Working Group notes that Italy had also committed to establishing such an institution in its voluntary pledge when putting forward its candidature to the Human Rights Council for the period 2011–2014.

56. Noting bills currently before Parliament,[8] the Working Group urges the Government to prioritize the establishment of such an institution with a broad human rights mandate, with an explicit power to make unannounced spot checks in detention facilities and with the necessary human and financial resources for its effective functioning.

[8] Such as A. C.1004, on the establishment of the national commission for the promotion and protection of human rights, submitted by Khalid Chaouki on 20 May 20 2013, then assigned to the First Committee on Constitutional Affairs on 29 July 2013; A. S.865, on the establishment of the national commission for the promotion and protection of human rights, submitted by Emma Fattorini on 21 June 2013; and A. C.1256, on the establishment of the national commission for the promotion and protection of human rights, submitted by Barbara Pollastrini on 24 June 2013.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

57. Following the ratification of the International Labour Organization Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Domestic Workers Convention, 2011 (No. 189), Italy accepted to be periodically reviewed with regard to the implementation of these Conventions at the domestic level. While noting that Italy is not yet a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Working Group encourages the Government to proceed with the ratification of this international instrument.

III. Conclusions

58. **The Working Group expresses its appreciation to the Government of Italy for the invitation to conduct follow-up, and highlights that this constitutes a good practice and an example for other States to follow in their cooperation with the special procedures of the Human Rights Council.**

59. **The Working Group welcomes the measures, especially legislative reforms, undertaken by the Government to implement its recommendations. It is encouraged by the open and rights-based dialogue in the legislative, executive and judicial branches on issues of arbitrary detention and notes that there is a clear realization at different levels of the need for further effort in several areas to prevent arbitrary deprivation of liberty.**

60. **Notwithstanding these positive developments, concerns remain with regard to the high number of pretrial detainees and, as a consequence, the problem of overcrowding in the penitentiary system. In addition, there is a need to monitor and remedy the disproportionate application of pretrial detention in the case of foreign nationals and Roma, including minors.**

61. **Noting that Italy does not have a general policy of mandatory detention of all asylum seekers and migrants in an irregular situation, as opposed to some other European countries, the Working Group welcomes the recent abolition of migration as an aggravating circumstance in criminal law and the steps taken by the Parliament to abrogate the crime of "illegal entry and stay". While noting with appreciation that the maximum duration of administrative detention in the identification and expulsion centres has recently been decreased from 18 months to 3 months, the Working Group remains concerned about the conditions of detention in the centres. Concerns are also expressed in relation to reports of summary returns of individuals, including in some cases unaccompanied minors and adult asylum seekers, in the context of bilateral readmission agreements, mainly due to inadequate or non-existing screening that fail to determine age or to inform them of their rights.**

62. **The Working Group notes that the special detention regime for mafia offenders under article 41 bis of the Law on the Penitentiary System has not yet been brought in compliance with international human rights requirements. The judicial review of the orders imposing or extending this form of detention would need to be sufficiently strengthened and expedited.**

63. **With regard to the psychiatric system, the Working Group recommends that the Government prioritize reform proposals to close the judicial psychiatric hospitals and transfer their competence to regional substitutive health-care structures.**

64. **The Working Group has noted the high degree of compliance with the current draft of the basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, which the Working Group has presented in accordance with Human Rights Council**

resolution 20/16, and which is declaratory of international law and based on the human rights conventions, customary international law and general principles of international law.

IV. Recommendations

65. **The Working Group encourages the Government to ensure that the positive legislative and administrative developments described in the present report are accompanied by effective implementation measures in strict compliance with international human rights principles and standards.**

66. **On the basis of its findings, the Working Group makes the below recommendations to the Government.**

67. **The Government should continue to 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.**

68. **The authorities should vigorously pursue their endeavours to combat prison overcrowding, including through increased application of non-custodial measures during the period before any imposition of a sentence. The Working Group would like to receive updated information on progress made by the authorities in this area, including disaggregated statistical data.**

69. **Urgent measures should be taken to improve living conditions in penitentiary institutions. In this respect, the Working Group calls on the authorities to comply with its recommendations on overincarceration and the Torreggiani judgement of the European Court of Human Rights.**

70. **The Government should intensify its efforts to tackle the root causes of discrimination in the criminal justice system, particularly to reduce the high rates of incarceration among foreign nationals and Roma.**

71. **The Government should develop a broad range of alternative measures to detention for children in conflict with the law.**

72. **Under article 41 bis of the Law on the Penitentiary System, any restrictive measure must be reviewed on a regular basis in order to ensure compliance with the principles of necessity and proportionality.**

73. **Deprivation of liberty of asylum seekers, refugees and migrants in an irregular situation should only be used as a measure of last resort. The Government should take sustained measures to ensure that these groups of individuals are detained only because they present a danger for themselves or others, or would abscond from future proceedings, always for the shortest time possible, and that non-custodial measures are always considered first as alternatives to detention.**

74. **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 an identification and expulsion centre.**

75. **All detained migrants should have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.**

76. **Detained migrants should be systematically informed in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, the right to promptly challenge their detention and to seek asylum.**

77. **All migrants deprived of their liberty should be able to promptly contact their family, consular services and a lawyer, which should be free of charge.**

78. **Comprehensive human rights training programmes should be developed for all staff who work in such centres.**

79. **A fairer and simpler system should be established for migrant detainees to be able to challenge expulsion and detention orders.**

80. **All detained persons who claim protection concerns should, without delay, be adequately informed of their right to seek asylum, have access to registration of asylum claims and should be able to communicate with the Office of the United Nations High Commissioner for Refugees, lawyers and civil society organizations.**

81. **In compliance with the European Union "Dublin III" Regulation, asylum seekers can be transferred only to European Union member States, according to the territorial competence of those member States in receiving and processing the asylum claim, as provided by the Regulation. The Government should prohibit the transfer of asylum seekers to detention centres in third countries that do not meet international human rights standards or that have no procedures to assess promptly claims for asylum.**

82. **The Working Group urges all relevant regional and national authorities to implement the reform of the psychiatric system as a matter of priority and to take all necessary steps to ensure that forensic psychiatric patients throughout Italy are henceforth provided with a therapeutic environment and individualized treatment programme on the basis of a multidisciplinary approach.**

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

84. **The Government should prioritize the establishment of a national human rights institution with a broad human rights mandate, with an explicit power to make unannounced spot checks in detention facilities and with the necessary human and financial resources for its effective functioning.**

85. **Following the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No. 195/2012), article 7 of Law No. 10/2014 has provided for the establishment by the Ministry of Justice of a national authority for the rights of detainees, tasked with monitoring the treatment of individuals deprived of personal freedom and the implementation of alternative measures to detention in conformity with constitutional, legislative and international standards. It will have the power to visit prisons, investigate on detention measures and visit judicial psychiatric hospitals and all institutions, including identification and expulsion centres, that host individuals deprived of personal liberty. It can also adopt specific recommendations. The Working Group considers that a fully independent national preventive mechanism should be established, in accordance with the Optional Protocol, which is mandated to visit all places where persons are deprived of their liberty.**

86. **The Government should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.**