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# **amnesty international**

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## **Italy**

**TEMPORARY STAY - PERMANENT  
RIGHTS:**

**The treatment of foreign nationals held in  
'temporary stay and assistance centres'  
(CPTAs)**



**June 2005  
AI Index: EUR 30/004/2005**

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**

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# **amnesty international**

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## **Italy**

### **TEMPORARY STAY - PERMANENT**

### **RIGHTS:**

### **The treatment of foreign nationals detained in 'temporary stay and assistance centres' (CPTAs)**

**June 2005**

**Summary**

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This report highlights Amnesty International's concerns about the situation of people, the majority of them irregular migrants but some of them asylum-seekers, detained in 'temporary stay and assistance' centres, commonly known as 'CPTAs'.

Each year thousands of foreign nationals are subject to expulsion or refusal-of-entry orders issued on grounds of illegal, or attempted illegal entry to, or illegal residence in Italy, which require that they be escorted to the border by law enforcement officers and expelled. While awaiting their removal from the country they are held in CPTAs, from which numerous allegations have emerged of treatment and conditions not in line with international refugee and human rights standards. Illustrative incidents are described in this report.

Amnesty International recognizes that states have a sovereign right to control the entry, residence and expulsion of foreign nationals on their territory. That right must, however, be exercised in accordance with international refugee and human rights law and standards and cannot be at the expense of the fundamental human rights of asylum-seekers or migrants, whatever their legal status.

There have been reports of people in some CPTAs being subjected, among other things, to physical assault by law enforcement officers and by supervisory staff; excessive and abusive administration of sedative and tranquillizing drugs; unhygienic living conditions; unsatisfactory medical care; lack of communication with the outside world; difficulties in gaining access to the legal advice necessary to challenge the legality of their detention and expulsion orders and, for those wishing to apply for asylum, difficulties in gaining access to the asylum determination process, resulting in the return of people to countries where they risk serious human rights violations. Such claims are made against a background of high tension in many centres, with reports of frequent protests, including escape attempts, and high levels of self-harm and outbreaks of violence between detainees.

Access to the CPTAs has been increasingly restricted. Over the last year representatives of the office of the UN High Commissioner for Refugees (UNHCR), members

of the Italian parliament, lawyers, pastoral workers, journalists and the majority of the key Italian non-governmental organizations (NGOs) operating in the field of asylum and immigration have either been denied access, or been allowed access to the centres only after substantial delay and following persistent requests. Amnesty International itself has sought, but so far been refused access to centres detaining asylum-seekers and unauthorized immigrants in Italy.

Restricted access means that it is not possible to confirm the accuracy of all the allegations concerning the CPTAs but their number, consistency and regularity, taken together with the conclusions of international governmental bodies and other reputable, international and domestic NGOs, has led Amnesty International to conclude that there is substantial cause for concern. That concern is exacerbated by several factors, including:

- new allegations emerging of some people held in the CPTAs also being subjected to physical assaults, dangerous methods of restraint and abusive use of drugs in the context of deportation operations by air;
- reports that detention regimes very similar to those found in the CPTAs, and with many of the attendant problems, are also to be found in some of the ‘new’ identification centres, formerly centres of ‘first assistance’ or ‘reception’ centres (established under previous legislation), where asylum-seekers may now be held under various forms of detention for administrative purposes and during which their applications for asylum are examined through an accelerated process;
- increasing confusion and blurring in the roles of the various types of centres and the recent emergence of so-called ‘multifunctional’ immigration centres - that is, facilities apparently containing separate sections, performing the functions of CPTAs and identification centres.
- Italy’s failure to establish a domestic independent monitoring and inspection body, mandated to make regular unannounced visits of inspection to detention facilities, in line with international standards.

The implementing legislation governing identification centres came into force on 21 April 2005 but the system is not yet fully functioning. In December 2004 the Minister of Interior informed parliament that existing CPTAs would be converted into new ‘multifunctional’ immigration centres and that further such centres would be established across the country: those plans are now under way. On 9 May 2005 the Council of Europe’s Committee of Ministers adopted a 20-point set of guidelines on the process relating to all stages of the ‘forced return’ of foreign nationals.

Amnesty International considers this an opportune moment for the Italian authorities to re-examine thoroughly their current policy, legislation and practice regarding the detention, conditions and treatment of irregular migrants and asylum-seekers and is calling on them to ensure that they are brought fully in line with international human rights and refugee law, paying particular attention to the Council of Europe’s new guidelines.

This report summarizes a 61-page document (23,900 words): *ITALY: TEMPORARY STAY - PERMANENT RIGHTS: The treatment of foreign nationals detained in ‘temporary stay and assistance centres’ (CPTAs)*, (AI Index: EUR 30/004/2005) issued by Amnesty International in June 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

[http://www.amnesty.org/email/email\\_updates.html](http://www.amnesty.org/email/email_updates.html)

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**

### **Who is a refugee?**

Every refugee is the result of a government's failure to protect human rights. The 1951 UN Convention relating to the Status of Refugees (the Refugee Convention) means that states must protect people who risk serious human rights abuses if they return to their country of origin because of who they are or what they believe. Most importantly, they should not be forcibly returned. Like anyone else, refugees have human rights. They also have rights because they are refugees and are, therefore, entitled to international protection. Refugees should have access to a durable solution. This may be local integration in their country of asylum, resettlement in another country, or voluntary repatriation to their country of origin.

### **Who is an asylum-seeker?**

An asylum-seeker is someone who has left their country but not found protection as a refugee. Although still awaiting formal and final determination of their status, the asylum-seeker is still entitled to the protection of international refugee law. Article 14 of the Universal Declaration of Human Rights says: "Everyone has the right to seek and enjoy in other countries asylum from persecution." Asylum-seekers should be assumed to be refugees, unless or until they are found *not* to be in need of international protection.

Asylum-seekers also have human rights. Amnesty International works to ensure that asylum-seekers:

- are not prohibited from entering a country to seek asylum;
- have access to fair procedures to determine whether they are refugees;
- are not prohibited from entering a country to seek asylum;
- are not unlawfully detained or subjected to torture or cruel, inhuman or degrading treatment or punishment;
- have access to family, friends, lawyers, interpreters and organizations that can help them, including the UN High Commissioner for Refugees (UNHCR);
- have access to basic economic, social and cultural rights, for example, to work, education and health care.

Amnesty International does not oppose the return of unsuccessful asylum-seekers if they are found not to be a refugee in a fair and satisfactory procedure and if their return takes place in safety, dignity and with full respect for human rights.

### **Who is a migrant?**

In general terms, a migrant is a person who is in another country either temporarily or permanently. Some migrants move voluntarily. Others feel impelled to leave because of the hardships they face in their home country. Still others move for a mixture of reasons.

Irregular migrants - also known as 'undocumented' migrants or 'illegal' immigrants - are people who enter and are present in a country of which they are not nationals, without the legal authorization to enter or remain there. Some are people who are working or looking for work in that country but who do not have a valid work permit for the country; others are victims of trafficking for sexual exploitation or forced labour; some are people who once had a permit to reside in the country, but whose residence permit is no longer valid; some are rejected asylum-seekers who have not left the country, although they are legally obliged to do so.

Migrants have human rights, including the right to freedom from arbitrary detention and from torture and cruel, inhuman or degrading treatment. Some international legal instruments are specific to the rights of migrant workers, including treaties of the International Labour Organization. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, which entered into force on 1 July 2003 represents an important milestone in the recognition of migrants' rights.

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# Italy

## TEMPORARY STAY - PERMANENT RIGHTS:

### The treatment of foreign nationals held in 'temporary stay and assistance centres' (CPTAs)

#### Introduction

Each year thousands of foreign nationals, some of them asylum-seekers, are subject to expulsion or refusal-of-entry orders issued on grounds of illegal, or attempted illegal entry to, or illegal residence in Italy which require that they be escorted to the border by law enforcement officers and expelled from the territory. While awaiting their removal from Italy they are deprived of their liberty and detained in 'temporary stay and assistance centres', where they may be held for up to a maximum of 60 days, until the orders can be carried out, or the maximum detention limit is reached. This document concerns their human rights -- in particular their physical treatment and detention conditions.

The centres in which they are detained (the Italian authorities themselves maintain that these individuals are not technically 'detained' but are, rather, 'held', that is -- *trattenuti*) are commonly referred to in Italy as CPTAs, an acronym of the original Italian: *Centri di Permanenza Temporanea e Assistenza*. CPTA is the term which will be used in this report.

The Italian government has defined CPTAs as:

"...the instrument selected to enable the provisions for the repatriation of aliens who have entered Italy illegally to be carried out more effectively... they are also **one of the key means of ensuring the effective functioning of**

**expulsion procedures which... is a pre-condition for the correct implementation of an immigration policy based on annual quotas.”<sup>1</sup>**

Amnesty International recognizes that states have a sovereign right to control the entry, residence and expulsion of foreign nationals on their territory. That right must, however, be exercised in accordance with international refugee and human rights law and standards. Importantly, these include the principles of non-discrimination and proportionality. The exercise of state sovereignty cannot be at the expense of the fundamental human rights of asylum-seekers or migrants, whatever their legal status. Amnesty International further notes the enhanced vulnerability of migrants who are compelled to use irregular migration channels to enter and work, and urges receiving states to develop and enhance legal opportunities for migration onto their territory.

In recent years, Amnesty International has drawn attention on numerous occasions to its concern over Italy’s failure to introduce a specific and comprehensive law on asylum and to ensure that asylum-seekers have access to a fair and satisfactory asylum determination procedure, in line with international refugee law and standards as well as its concern that asylum-seekers are increasingly being detained in circumstances which are not in accordance with international refugee standards<sup>2</sup>. Under these standards asylum-seekers should be detained only in exceptional circumstances, only when the authorities can demonstrate in each individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers, and then only for the shortest possible time. Detention is an extreme sanction for people who have not committed a criminal offence. It violates one of the most fundamental human rights protected by international law -- the right to liberty. In addition, some people will have been detained without charge or trial in their own country, and/or have been subjected to torture, only to be further detained at some stage of the asylum process in Italy.

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<sup>1</sup> See Italy’s fourth periodic report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UN Doc No: CAT/C/67/Add.3, dated April 2004 – section 1b. – *Temporary Stay and Assistance Centres*) currently pending consideration by the United Nations Committee against Torture.

<sup>2</sup> These include the Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers issued by the UN High Commissioner for Refugees (UNHCR) and the Conclusion on Detention of Refugees and Asylum Seekers, No 44 (XXXVII), 1986, issued by UNHCR’s Executive Committee (EXCOM).

Such issues relating to asylum-seekers are touched on in the present document but they are not its principle focus. Details of Amnesty International's recent public documents and interventions on these issues are indicated in the footnote below.<sup>3</sup>

The *current* document concerns the treatment and conditions of those detained in CPTAs, the majority of whom are irregular migrants but some of whom are asylum-seekers. Amnesty International considers that the detention of any irregular migrant should be resorted to only on grounds prescribed by law, in accordance with international human rights principles and on the basis of an assessment as to its necessity and appropriateness in the individual case and when there is evidence to suggest that alternatives to detention will not be effective and there is an objective risk of the person absconding. The individuals concerned should also be provided with an effective opportunity to challenge the decision to detain them.

This document draws attention in particular to reports and allegations emanating from the CPTAs in recent years of treatment and conditions which are not in line with international human rights standards. Some of these reports have been described in summary in various previous public documents issued by Amnesty International.<sup>4</sup>

The organization has been concerned by allegations of people being held in some CPTAs being subjected, among other things; physical assault by law enforcement officers providing security services for the centres and by supervisory staff employed by the various bodies managing the centres on behalf of the Italian authorities; excessive and abusive administration of sedative and tranquillizing drugs; unhygienic living conditions; unsatisfactory medical care; lack of communication with the outside world; difficulties in gaining access to the legal advice necessary to challenge the legality of their detention and expulsion orders and, for those wishing to apply for asylum, difficulties in gaining access to the asylum determination process, resulting in the return of people to countries where they risk serious human rights violations. The allegations emerging from the CPTAs are made against a background

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<sup>3</sup> Details of Amnesty International's public documents and interventions on these issues may be found in successive editions of the annual *Amnesty International Report* and of the bi-annual *Amnesty International Concerns in Europe and Central Asia*. See also *Italy: Government must ensure access to asylum for those in need of protection* (AI Index: EUR 30/001/2004); *Amnesty International Urgent Action – Italy/Libya* (AI Index: EUR 30/001/2005), March 2005; *Amnesty International calls on the European Commission to take action against Italy* (AI Index: IOR 61/007/2005), all available at [www.amnesty.org](http://www.amnesty.org). Detailed information in Italian may be found at [www.amnesty.it](http://www.amnesty.it).

<sup>4</sup> See successive editions of the annual *Amnesty International Report* and of the bi-annual *Amnesty International Concerns in Europe and Central Asia*. See also *Protection Gaps: Amnesty International's concerns to UNHCR's Standing Committee, 8 – 11 March 2005, Detention practices in Europe* (AI Index: IOR 42/001/2005).



of high tension in many centres, with reports of frequent protests, including escape attempts, and high levels of self-harm and outbreaks of violence between detainees. Examples of the allegations emerging may be found in the final chapter of this document (see *Incidents illustrative of Amnesty International's concerns*).

The reports and allegations have been made by CPTA detainees, lawyers, doctors, locally-based non-governmental organizations (NGOs), pastoral workers, journalists and members of parliament drawn principally from opposition parties. In May 2005 representatives of four Italian police unions made public statements expressing concern about various aspects of the situation in the CPTAs. Over the last 12 months concerns about the functioning of the CPTAs in general, and/or the situation in some specific CPTAs, have also been expressed by inter-governmental and inter-parliamentary bodies, including the UN Special Rapporteur for the Human Rights of Migrants, the UN High Commissioner for Refugees (UNHCR), the Council of Europe's Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Parliament. In April 2005 a series of questions concerning the human rights of people passing through one centre confining asylum-seekers and irregular migrants was addressed to the Italian government by the European Court of Human Rights (see below -- *Incidents illustrative of Amnesty International's concerns: Lampedusa Airport Zone CPTA*).

Amnesty International is not in a position to confirm the veracity of all the allegations coming to its attention, nor to assess fully government assertions that over the last year, in particular, improvements have been made regarding some aspects of the CPTAs and that the human rights of the detainees are fully observed. A major obstacle to a full assessment of the situation in the CPTAs is the increasingly restricted access to the centres: much of the information emerging from them is, therefore, inevitably anecdotal. Amnesty International itself has sought but so far been refused access to centres detaining asylum-seekers and irregular migrants in Italy.<sup>5</sup>

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<sup>5</sup> At the time of writing Amnesty International is still awaiting a response to the letter which it addressed to the Minister of Interior on 14 March 2005 (see Appendix 1), asking him to reconsider the refusal, by the Ministry's Department for Civil Liberties and Immigration, of the organization's request to carry out visits to 'identification' centres in order to carry out research into the human rights of migrant children. Amnesty International's letter also sought the Minister's assurance of his government's willingness, in principle, to allow Amnesty International to carry out visits, with prior notice, in order to assess the human rights situation of the residents of all facilities used to detain asylum-seekers and unauthorized immigrants, setting out the international standards lending support to its request. It sought further assurance that during such visits Amnesty International's researchers would be able to speak to residents in private, subject to their agreement and to reasonable conditions to ensure security and good order.

Over the last year representatives of the office of the UN High Commissioner for Refugees (UNHCR), members of the Italian parliament, lawyers, pastoral workers, journalists and the majority of the key Italian non-governmental organizations (NGOs) operating in the field of asylum and immigration have either been denied access, or been allowed access to the centres only after substantial delay and following persistent requests.

While it is not possible to confirm the accuracy of all the allegations reported, their number, consistency and regularity, taken together with the conclusions of international governmental bodies and other reputable, international and domestic NGOs, leads Amnesty International to believe that there is substantial cause for concern.

Amnesty International's concern about the reported human rights violations emerging from the CPTAs is exacerbated by several factors in addition to the lack of access and, therefore, lack of transparency in the functioning of the centres. These factors include:

- new allegations emerging of some foreign nationals held in the CPTAs also being subjected to physical assaults, dangerous methods of restraint and abusive use of drugs in the context of deportation operations by air;
- reports that detention regimes very similar to those found in the CPTAs, and with many of the attendant problems, are also to be found in some of the 'new' identification centres (*Centri di identificazione*), formerly centres of 'first assistance' or 'reception' centres (established under previous legislation), where asylum-seekers may now be held under various forms of detention<sup>6</sup> for up to 20 days for administrative purposes and during which their applications for asylum are examined through an accelerated process;
- an increasing confusion and blurring in the roles of the various types of centres and the recent emergence of so-called 'multifunctional' immigration centres (*centri polifunzionali per l'immigrazione*). The development of such centres -- that is, facilities apparently containing separate sections, performing the functions of CPTAs and identification centres, was announced by the Minister of Interior in 2004.

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<sup>6</sup> Amnesty International considers that asylum-seekers deprived of their liberty in identification centres are being held in detention-like conditions and, therefore, the organization refers to them as detainees. As such, the UNHCR revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers applies to them.

- the lack of a domestic independent monitoring and inspection body, mandated to make regular unannounced visits of inspection to detention facilities, in line with international standards, coupled with Italy's failure to establish any independent national human rights institution (NHRI), conforming to the so-called 'Paris Principles' relating to the functioning of NHRIs<sup>7</sup>, under whose aegis such a body and/or visits might be organized.

The implementing legislation governing identification centres came into force on 21 April 2005 but the system is not yet fully functioning. In December 2004 the Minister of Interior informed parliament that existing CPTAs would be converted into new 'multifunctional' immigration centres and further such centres would be established across the country: those plans are now under way. On 9 May 2005 the Council of Europe's Committee of Ministers adopted a 20-point set of guidelines on the process relating to all stages of the 'forced return' of foreign nationals<sup>8</sup>. These recall existing rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and contains chapters covering various aspects of 'forced return', including one devoted to *Detention pending removal*, indicating, among other things, the conditions under which detention may be ordered and conditions of detention pending removal and a chapter devoted to *Forced removals*, covering, among other things, the area of cooperation with returnees, the use of escorts and means of restraint.

Amnesty International believes this is an opportune moment for the Italian authorities to re-examine thoroughly their current policy, legislation and practice regarding the detention, conditions and treatment of irregular migrants and asylum-seekers and ensure they are brought fully in line with international human rights and refugee law, paying particular attention to the Council of Europe's new guidelines.

Amnesty International has drawn up a series of recommendations which it is urging the Italian authorities to address as a matter of priority and which point out the key international standards which already apply to individuals held in CPTAs and identification centres. These include - the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the UN Standard Minimum Rules for the Treatment of Prisoners; the European Prison Rules; Recommendation CommDH/Rec (2001)1 'concerning the rights of aliens wishing to enter a Council of Europe member state and for the enforcement of 'expulsion orders', issued by the Council of Europe's Commissioner for Human Rights in September 2001; the Standards of the Council of Europe's Committee for the Prevention of

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<sup>7</sup> Adopted by the UN General Assembly in 1993.

<sup>8</sup> CM (2005) 40. Text reproduced in full in Appendix 3.

Torture concerning ‘Foreign nationals detained under aliens legislation’ and ‘Deportation of foreign nationals by air’ as well as UNHCR’s Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.

**“Few differences were apparent between detention in the CPTAs and in the identification centres. The Special Rapporteur would like to express her concern at the gradual transformation of local reception centres into identification centres. She would also like to express concern at the consequences of and limitations inherent in the private management of such centres. In the absence of a national human rights institution, she considers that an independent organization is needed to supervise the management of the centres, respect for the human rights of the people held there and the health, psychological and legal assistance provided. This body should also supervise access by NGOs and lawyers to the centres. The Special Rapporteur considers that building new centres is not the solution to illegal immigration.”**

Extract from the report of the UN Special Rapporteur on the human rights of migrants following her June 2004 visit to Italy, including visits to CPTAs and identification centres.<sup>9</sup>

## **Categories and stated functions of centres established to detain irregular migrants and asylum-seekers**

Centres currently fall into two main categories: CPTAs and identification centres.

### **Identification centres (Centri di Identificazione – CdIs)**

Law 189/2002 of July 2002, the so-called Bossi-Fini law, amending existing legislation concerning immigration and asylum<sup>10</sup>, which came into force in September

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<sup>9</sup> UN Doc No: E/CN.4/2005/85/Add.3, paragraph 86.

2002, made provision for the establishment of identification centres to detain asylum-seekers.

However, there was a delay of several years in adopting the relevant implementing legislation for Law 189/2002<sup>11</sup>. This legislation -- Presidential Decree (DPR) 303/2004 -- did not come into force until 21 April 2005. As a result, at the time of writing the system of identification centres is not fully operational. A number of identification centres have been converted from former ‘first reception’ centres (*centri di prima accoglienza*) for asylum-seekers and migrants, established as open centres under previous legislation of 1995 (*Legge Puglia*), or constructed adjacent to such centres or to CPTAs. Others are apparently still at the planning or construction stage. Meanwhile, since the entry into force of Law 189/2002 in September 2002, several of the existing facilities appear to have been used as de facto, *closed* centres, detaining both asylum-seekers and irregular migrants, including children accompanied by parents or relatives, for uncertain periods of time, and have been widely referred to as ‘identification’ centres by the public, the media and, on occasion, the government.<sup>12</sup> The legal provisions under which these centres have been operating are entirely unclear.

Under DPR 303/2004 the Prefect (*Prefetto* - Head of the Government Territorial Office) of the province in which the centre is established “may entrust the management, through suitable agreements, to local, public or private authorities operating in the field of assistance to asylum-seekers or to migrants, or in the field of social work”.<sup>13</sup> The centre should be run by a director with experience in social work or assisting immigrants, together with supervisory staff possessing “as a rule” (“*in via ordinaria*”) skills relevant to the specific needs of asylum-seekers, women and children. Detainees are to be guaranteed dignity and health and attention must be paid to particular needs, such as those of children (DPR 303/2004 directs that unaccompanied minors should not be detained in identification centres), the disabled, pregnant women and those who have been persecuted in their place of origin. The need for a “continuous security service” (“*un costante servizio di vigilanza*”) is also stipulated.

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<sup>10</sup> *Legge 30 luglio 2002, n.189 “Modifica alla normativa in materia di immigrazione e di asilo”.*

<sup>11</sup> Presidential Decree - DPR No 303 of September 2004, published in the official gazette in December 2004.

<sup>12</sup> See, for example, the Italian government’s fifth periodic report to the UN Human Rights Committee, (UN Doc No: CCPR/C/ITA/2004/5, dated March 2004) and its fourth periodic report to the UN Committee against Torture (UN Doc No: CAT/C/67/Add.3, dated April 2004).

<sup>13</sup> “*Il prefetto della provincia in cui è istituito il centro può affidarne la gestione, attraverso apposite convenzioni, ad enti locali, ad enti pubblici o private che operino nel settore dell’assistenza ai richiedenti d’asilo o agli immigrati, ovvero nel settore dell’assistenza sociale*” DPR No 303/2004, Article 7.1.

Detainees are to be informed, in a language they understand, of the asylum determination process and their rights while in the centre. The management is to provide them with a legal information service concerning “recognition of refugee status” and an interpretation service. All have the right to have access to, and to receive visits from representatives of UNHCR, their lawyers, co-habiting partners, and -- subject to authorization by the Prefecture (Government Territorial Office) -- to other relatives or other Italian citizens. There is also provision for visits by representatives of bodies which are described as being “for the protection of refugees”. However, this is subject to authorization in principle by the Ministry of the Interior as well as specific permission to enter visiting rooms, at scheduled times, by the relevant Prefect. DPR 303/2004 also indicates that local and central authorities may provide information and legal services, social and psychological support services, and information about voluntary repatriation to the detainees but that a Prefect can deny admission to those providing such services, giving the reasons for such a decision.

The law provides for seven identification centres and for the creation of further centres (see *List of CPTAs and identification centres known to Amnesty International* -- Appendix 2).

As well as introducing detention -- in identification centres -- for the majority of asylum-seekers as a matter of course, rather than as an exceptional measure in line with international refugee standards (see under *Introduction* - above), Law 189/2002 established accelerated asylum determination procedures for these detained asylum-seekers, various aspects of which have been criticised by Amnesty International and other international and domestic NGOs, as well as UNHCR. Concern has been expressed in particular that, although there is provision for an asylum-seeker to submit a final appeal to a court, if his/her asylum application has been rejected both by the Territorial Commission for the recognition of refugee status (the first instance decision-making body on asylum applications) and by the National Commission on the Right of Asylum (second instance body), the appeal does not suspend the individual’s deportation, thus rendering the right of appeal ineffective.

The initial request for asylum should be made immediately on arrival on Italian territory, to the border police (*polizia di frontiera*) or the *Questura* (the Provincial Police Authority). Law 189/2002 states explicitly that asylum-seekers cannot be detained for the sole purpose of examining their asylum applications. However, the *Questura* may order the detention of a broad range of asylum-seekers in identification centres.

Detention is not mandatory but *may* be ordered for up to a maximum of 20 days in the following circumstances:

- in order to verify or determine the asylum-seeker's nationality or identity, if they are not carrying travel or personal identity documents, or if they have presented false documents on arrival;
- in order to check the grounds on which their asylum application is based;
- while they are awaiting the outcome of the proceedings concerning the recognition of the right to be admitted to Italy.

For such detainees the length of the applicable asylum determination process envisaged is 35 days. If they wish to go outside the centre on a regular basis between 8am and 8pm they have to seek permission from the centre's director and have to apply to the relevant government official of the Prefecture for special authorization for longer absences allowed under certain circumstances. The punishment for an unauthorized absence is severe as it is automatically equated with withdrawal of the asylum application. At the time of writing it is too early to assess how these provisions have been applied since 21 April 2005.

Detention in an identification centre is *mandatory* for asylum-seekers who have presented asylum applications after evading or trying to evade border controls, or who have presented applications whilst residing 'irregularly' in Italy. The maximum length of detention in an identification centre does not appear to be clearly defined in such cases. The length of the asylum determination process envisaged in the case of those in mandatory detention is 20 days.

Detention for asylum-seekers whose asylum applications are submitted after an expulsion or refusal of entry order has been issued is also mandatory, but in such cases the legislation directs that they should not be held in an identification centre but in a CPTA (see below).

As indicated above, final appeals against the rejection of asylum applications may be submitted to the court with relevant territorial jurisdiction but do not suspend an expulsion order. However, asylum-seekers who are held in identification centres and who have entered such a final appeal may nevertheless ask the Prefect for permission to stay in Italy until the court's decision on the appeal (permission which may or may not be granted). They may then be held in a CPTA.

## **CPTAs**

The CPTAs were first established in 1998 under Law 40/1998, the so-called Turco-Napolitano law, which was later merged into Legislative Decree No 286 of 25 July 1998 (the ‘Single’ or ‘Consolidated’ Text ‘concerning immigration matters and standards concerning the condition of the alien’<sup>14</sup>). Further legislation and regulations relevant to the CPTAs were subsequently introduced including: Presidential Decree 394/1999<sup>15</sup> (the implementing legislation for the Consolidated Text), amended by Presidential Decree 334/2004<sup>16</sup>; a Directive of August 2000<sup>17</sup>; Law 189/2002 -- the so-called Bossi-Fini law of July 2002<sup>18</sup>, and Decree Law No 241 of September 2004<sup>19</sup>, subsequently converted into Law 271 of 12 November 2004. The number of laws and regulations have resulted in much confusion and there have been difficulties in the interpretation of the Bossi-Fini law, the precise provisions of which are, as a result, still evolving.

The first CPTAs were established shortly after Law 40/98 came into force, following mass arrivals of migrants, mainly from the Balkans and North Africa, on the southern coasts of Italy. CPTAs are now found scattered across the country (see *List of centres* - Appendix 2) but the majority are still located in the south, in the regions of Sicily and Puglia. Thousands of people now pass through the CPTAs each year. According to official statistics, a total of 14,223 people were held in the CPTAs in 2003 and 15,647 in 2004. Only around half of those held in the CPTAs each year are actually expelled from the country at the end of their detention: around a quarter have to be released because the maximum time limit has been reached (see below).

## Stated Purpose of the CPTAs

The CPTAs were established in order to detain foreign nationals in an irregular situation (that is, with no right of entry to or residence in Italy, who had been issued with expulsion (*espulsione*) or refusal of entry (*respingimento*) orders stipulating that they should be removed from the country by being forcibly escorted to the border by law enforcement officers (*accompagnamento alla frontiera a mezzo della forza*

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<sup>14</sup> Decreto Legislativo 25 luglio 1998, n. 286 – Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero.

<sup>15</sup> DPR n 394 Regolamento di attuazione del Testo Unico.

<sup>16</sup> DPR del 18 ottobre 2004 n. 334.

<sup>17</sup> Direttiva Prot. N. 3435/50, 30 Agosto 2000 – Direttiva generale in materia di CPTA ai sensi dell’articolo 22, comma 1 del D.P.R. 31 agosto 1999, n. 394.

<sup>18</sup> Legge 30 luglio 2002, n.189 “Modifica alla normativa in materia di immigrazione e di asilo”

<sup>19</sup> Decreto legge 14 settembre 2004, n. 241 – Disposizioni urgenti in materia di immigrazione.



*pubblica*). Those to be held in the CPTAs were those who could not be immediately removed because of a need:

- to provide emergency (humanitarian) assistance;
- to carry out a further check on their identity or nationality;
- to acquire the necessary travel documents;
- to await a suitable means of transport becoming available to carry out their expulsion.

Under the legislation of 1998, these foreign nationals could be held in CPTAs only for the strict amount of time necessary to carry out the order of expulsion or refusal of entry -- and for up to a maximum of 30 days (that is, 20 initial days with possible 10-day extension by a judge, if the obstacle to their removal still remained). If they had not been removed by the end of the maximum period of detention then they were released with an injunction to leave the country, under their own responsibility, within 15 days. Failure to obey the injunction entailed a new order of forcible removal under escort. Those issued with expulsion or refusal of entry orders were also automatically banned from entering Italy and the Schengen area<sup>20</sup> for five years.

Prior to amendments introduced by Law 189/2002, the majority of expulsion orders did *not* contain the stipulation of removal via forcible escort: such a stipulation was *optional* -- to be applied only if the authorities considered there to be a concrete risk (“un concreto pericolo”) of the individual disobeying the order. The majority of individuals received an injunction to leave the country (*intimazione a lasciare il territorio dello Stato*) within 15 days, under their own responsibility, and thus they were not detained in the CPTAs.

After Law 189/2002 of July 2002 came into force in September 2002, removal by means of forcible escort to the frontier became *mandatory* for those issued with expulsion or refusal of entry order, and thus detention in a CPTA (providing sufficient places are available) became the norm. Only one category of foreigner receiving an expulsion order -- those failing to apply for renewal of their residence permits within 60 days of their expiry date -- may still be issued with an injunction to leave the country under their own responsibility, rather than receiving an order for forcible escort to the border. However, even in such cases, if the *Questura* considers that they may not obey the injunction, then these individuals may also be issued with an order for forcible escort to the border, entailing possible detention in a CPTA. The

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<sup>20</sup> The Schengen area comprises those European countries which have signed the convention implementing the Schengen Agreements of 1985 and 1990 on the free movement of persons and the harmonization of border controls in Europe.

maximum period of detention in a CPTA is now 60 days (an initial 30 days, with a possibility of an extension of up to a further 30 days with judicial approval). If the removal has not been carried out by the end of the maximum period of detention then the individual is released with an injunction to leave the country under their own responsibility within five days. However, delays and inefficiencies in the system have reportedly led to some individuals being detained repeatedly for the maximum period. The ban on re-entering Italy and the Schengen area is now 10 years.

Failure to obey the injunction is a criminal offence punishable by between six months' and one year's imprisonment, and entails a new order for expulsion under escort. Further offences incur increased prison penalties and further expulsion orders.

There are currently over a dozen CPTAs (see *List of CPTAs and identification centres known to Amnesty International – Appendix 2*).

### **Who is detained in the CPTAs?**

They include foreigners stopped on the coast, on the streets, in the community or in police stations: some 60 per cent are reported to be foreigners transferred from prison facilities where they have been held in connection with criminal offences.

The categories of people who may be expelled – either via administrative or judicial expulsion - and who are thus liable to be detained in the CPTAs include:

- asylum-seekers submitting applications for asylum after an expulsion or refusal of entry order has been issued and asylum-seekers awaiting a court decision on their final appeals against the rejection of their applications;
- undocumented migrants, that is, those who have entered or stayed in Italy without authorization;
- migrants in an irregular or regular situation who are considered to be 'dangerous' to society because suspected of, or habitually involved in certain criminal activities;
- migrants who have failed to apply for renewal of their residence permits within 60 days of their expiry date and are considered likely to disobey an expulsion order;

- foreigners considered a risk to public order and state security by the Minister of Interior who has the power to order their expulsion, providing the Prime Minister and Minister of Foreign Affairs are informed in advance;
- irregular migrants transferred from prison facilities where they have been serving sentences in connection with criminal offences;
- foreigners whose expulsion has been ordered by a judge, when convicting them for a wide range of criminal offences<sup>21</sup> punishable by sentences of over three years' imprisonment in some cases (including, for example, offences of violently resisting or threatening a law enforcement official) and over five years' imprisonment in others (including, for example, offences committed "for terrorist purposes" and offences relating to participation in organized crime) and considering them to present a danger to society: their expulsion is carried out at the end of the prison sentence);
- irregular migrants who have received an expulsion order as an *alternative* to a prison sentence (*sanzione sostitutiva*). A judge trying a foreigner -- in an irregular situation -- for a criminal offence carrying a possible prison sentence of less than two years has the power, if he/she believes the requisite conditions for issuing a suspended sentence are not present, to pronounce a sentence of expulsion;
- irregular migrants serving a definitive prison sentence of up to two years or with up to two years of a sentence remaining to be served, where a magistrate of surveillance has exercised his/her power to order their expulsion as an alternative to serving the remainder of their prison sentence (*sanzione alternativa alla detenzione*). Although such foreigners are apparently in practice transferred to CPTAs prior to expulsion, the wording of Law 189/2002 in fact indicates that they should remain in *prison* until the necessary travel documents have been acquired.

Categories of people whose expulsion is not allowed and who, by extension, should not be held in the CPTAs, include:

- those risking "persecution" on return, on grounds of "race, sex, language, citizenship, their religion or political opinions or their personal or social condition" (individuals applying for asylum after receiving an expulsion order and entering a CPTA should be released from CPTA detention and their expulsion suspended while the application is being considered);

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<sup>21</sup> Offences covered by the provisions of articles 380 and 381 of the Code of Criminal Procedure.

- unaccompanied children and children under 18 cannot be expelled -- unless by reason of the right to family unity, in order to stay with parents or legal guardians being expelled (in that case they may be held in CPTAs with their parents or guardians);
- pregnant women (and women within six months of giving birth to a child remaining in their care) and the relevant woman's co-habiting husband;
- those cohabiting with a wife or close relatives holding Italian citizenship;
- documented migrants who do not renew their residence permits within 60 days of their expiry date and are *not* considered likely to disobey an expulsion order.

However, there have been numerous reported instances of people in all the above categories being held in the CPTAs.

### **Summary overview of the process of administrative expulsion**

In the case of administrative expulsions (except those ordered by the Minister of Interior on grounds of public order and state security -- see above), when the law enforcement agencies encounter people they believe to be in an irregular situation, the *Questore* (Head of the Provincial Police Administration) notifies the *Prefetto* (Head of the Government Territorial Office), who issues the order of expulsion (*decreto di espulsione*). The order also sets out the reasons for the order and is with immediate effect. It should be served on the individual by the *Questore*'s office -- in a language understood by the individual. Persons applying for asylum after

The individual can submit an appeal against the expulsion order to a justice of the peace (*giudice di pace*<sup>22</sup>), within 60 days of it being issued, and the judge's decision must be given within 20 days. However, an appeal does not suspend the person's removal from the territory. Therefore, there is a general danger of individuals having the opportunity to submit appeals only *after* they have been expelled, via the Italian diplomatic or consular representatives in their country of origin.

The individual has the right to be represented in the appeal process by a lawyer, including one allocated and paid for by the state: the services of an interpreter should also be provided, where necessary.

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<sup>22</sup> A non-career magistrate.

The measure directing that the individual must be forcibly escorted to the border is issued by the *Questore*, who is required to inform the territorially competent judge of the order, within 48 hours of its adoption, in order for the judge to confirm it (*convalida*). Pending the judge's decision the individual is held in a CPTA. The approval hearing (*udienza*) takes place in closed session (*camera di consiglio*). Following the introduction of a Decree-Law of September 2004<sup>23</sup>, subsequently converted into Law 271/2004, a lawyer to represent the individual must be informed of the hearing in a timely manner (*tempestivamente avvertito*) and must participate. The Decree Law was the result of a Constitutional Court ruling of July 2004<sup>24</sup> which found Law 189/2002 to be in violation of article 3 (relating to the principle of equality of foreigners with Italian citizens) and article 11 (relating to the fair trial proceedings principle) of the Italian Constitution in that it made no provision for the judicial hearing, to confirm the escort to the border measure, to take place with the participation of a lawyer representing the individual, and no explicit provision for the authorization hearing to take place before the person's removal. However, some lawyers have complained that, in practice, the time allocated to them at the hearing is too brief to allow them to represent their clients effectively.

The individual has the right to have a lawyer selected and paid for by the court, if necessary. The individual must also be informed of the hearing in a timely manner and brought before the judge. The services of an interpreter should also be made available, if necessary. The judge must issue his/her decision, accompanied by the written reasoning behind the decision, within another 48 hours.

At the same time as being informed of the expulsion and forcible escort to border orders, the individual receives the order of detention in a CPTA, which is issued by the *Questore*. The order of detention in a CPTA also has to be approved (*convalida*) in a hearing before a justice of the peace, within 48 hours of it being issued (it may take place at the same time as the hearing to approve the forcible escort to the border order). A lawyer representing the individual must participate and the individual has the right to participate. The judge must issue his/her decision and written reasoning within the following 48 hours or the measure loses effect.

## Basic organization of the CPTAs

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<sup>23</sup> Decree Law n 241 of September 2004 (*Decreto legge, 14 settembre 2004, n. 241 – Disposizioni urgenti in materia di immigrazione*).

<sup>24</sup> *Sentenza 222/2004*.

The Ministry of Interior carries overall responsibility for the CPTAs and pays for their upkeep and management. The Prefect of the province in which the individual CPTA is located is responsible for agreeing contracts for the management of the centres with local authorities, or other public or private bodies which are selected in accordance with criteria laid down by the Ministry of Interior.<sup>25</sup>

Around half the CPTAs are managed by the Italian branch of the Red Cross and by the *Confraternità delle Misericordie d'Italia*, a lay Catholic body: some are managed by ad hoc associations - such as the *Fiamme d'Argento* cooperative, composed of retired *carabinieri* managing Restinco CPTA, and the *Fondazione Regina Pacis*, closely attached to the Catholic Archdiocese of Lecce, which managed the 'Regina Pacis' centre, a CPTA to the end of December 2004. At least one is managed by a local authority, the *Comune di Otranto* (managing the Centro Don Tonino Bello, Lecce). The supervisory staff employed by the management inside the centres may include both men and women but, according to the relevant directive, female detainees should be able to have the assistance of personnel of the same sex.

The managing bodies have the right, in turn, to contract out certain services to voluntary groups, cooperative associations or other bodies<sup>26</sup>: these might include catering or laundry services but also services providing interpretation, legal information, cultural mediation, psychological support and social assistance.

It is the role of the *Questore* to ensure the external security and public order of the CPTAs. The relevant regulations<sup>27</sup> direct that the perimeters of the CPTAs are guarded by law enforcement agencies (state police, *carabinieri* and *guardia di finanza*), whose officers should intervene where necessary to restore order, and to prevent people escaping. It is also the role of law enforcement officers to accompany detainees during transfers to and from the centre (for example, to judicial offices, consular offices or to flights out of the country).

Under the relevant domestic regulations:

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<sup>25</sup> Including the *Linee Guida e Convenzioni Tipo per la Gestione di CPTAs e di centri di identificazione (già d'accoglienza)* – Prot. 3154/D.C.S./11.6 del 27 novembre 2002, issued by the Ministry of Interior's Department for Civil Liberties and Immigration, which came into force in January 2003.

<sup>26</sup> "... di altri enti, di associazione del volontariato, e cooperative di solidarietà sociale" – Article 22, DPR 394 of 31 August 1999.

<sup>27</sup> *Direttiva Prot. N. 3435/50* of 30 August 2000, issued by Ministry of Interior (*Direzione generale dei servizi civili*): *Oggetto: direttiva generale in materia di Centri di Permanenza temporanea ed assistenza ai sensi dell'articolo 22, comma i del D.P.R. 31 agosto 1999, n 394.*

- Foreign nationals detained in CPTAs should be treated with full respect for the dignity of the human person, with absolute impartiality and without discrimination of any kind and it is the duty of the Ministry of Interior to ensure that their rights are respected.<sup>28</sup>

- An internal code (*Regolamento interno*) should be drawn up for each centre regulating the treatment of detainees in the centre, and the health and other services available to them. Its key contents, together with a copy of a ‘letter of rights and duties’ (*carta dei diritti e doveri*), translated into a language understood by the foreign national in question, should be conveyed to each individual on admission to the CPTA.

- The information given to detainees, should include:

- the reason why, and the legislation under which they have been detained; the expulsion process being followed; their right of appeal; their right to the assistance of a lawyer, including one paid for by the state; the possible duration of their detention; the assistance and services available to them (including the right of access to services providing interpretation, legal information, cultural mediation, psychological support and social assistance) and the possibility of applying for asylum;

- their right to be provided with medical treatment by doctors and nurses; three meals a day; food and preparation of food of a kind respecting, as far as possible, their particular religious faith; hygiene products; bedding and towels; essential and appropriate clothing; a laundry service and the use of areas allocated for sport or other recreational activities;

- their right to be united with members of their nuclear family, if they are also under a CPTA detention order, and to ask for relatives or friends, and diplomatic representatives of their country to be informed immediately of their detention;

- their right to have meetings in private with any lawyer representing them, and to meet relevant diplomatic representatives, cohabiting relatives and pastoral workers (*ministri di culto*); their right to meet representatives of “humanitarian

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<sup>28</sup> See Article 14.2 of Legislative Decree n.286 of July 1998 – the TU Single (Consolidated) text: “*Lo straniero e trattenuto nel centro con modalita tali da assicurare la necessaria assistenza ed il pieno rispetto della sua dignita*” and *Direttiva Prot. N. 3435/50* of 30 August 2000): “*Il trattenimento all’interno del Centro deve essere conforme al rispetto della dignita della persona ed improntata ad assoluta imparzialita ed assenza di discriminazione di ogni genere*”.

organizations” which may be working in the centre in order to clarify their situation, and to obtain legal information, social assistance or psychological support;

- their right to request and receive visits, with prior authorization by the Prefect’s office, from Italian citizens or foreign nationals authorized to stay in Italy;

- their right to freely send and receive correspondence and to use their own mobile phones or public phones installed in the centre.

In addition, UNHCR representatives in Italy, carrying relevant Ministry of Interior authorization, have right of access to the centres at any moment, except for “reasons of security and the orderly functioning of the structure” (“*le esigenze di sicurezza e di regolare funzionamento della struttura*”) and to speak in private to any foreign national who wishes to make use of this possibility.

Members of parliament have a right of entry to any place of detention in Italy, including CPTAs. In March 2005, responding to parliamentary questions seeking clarification on rights of access, the Under-Secretary of State for the Interior stated that, in addition to members of the Italian parliament, under the provisions of article 21 of DPR 394 of 31 August 1999, access to a CPTA is allowed only to the staff of the managing body; to members of the law enforcement agencies; to the relevant judge; to the public security authorities; to co-habiting relatives of the detainees; to pastoral workers (*ministri di culto*), to diplomatic or consular representatives; to the personnel of voluntary associations (*associazioni del volontariato*) and to cooperatives carrying out social work (*cooperative di solidarieta sociale*) admitted in order to carry out support work and activities on the basis of contracts agreed with the Prefect’s office, or on the basis of collaborative projects (*progetti di collaborazione*) agreed with the Prefect’s office. He stated that, in addition, some individual authorizations for access had been issued in response to specific and well-justified requests (“*in relazione a specifiche esigenze adeguatamente motivate*”).<sup>29</sup>

## **Reports of treatment and conditions falling short of international human rights standards**

In theory, the pertinent legislation and regulations appear to make provision for CPTA inmates to enjoy many of the key rights of detainees and asylum-seekers, under international human rights standards. However, there appear to be frequent marked

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<sup>29</sup> Senato - Seduta n. 761 del 10/03/05.



differences between policy and practice and a very different picture emerges from the reports and allegations concerning the situation in CPTAs which have come to Amnesty International's attention in recent years.

In January 2004 the Italian branch of the prominent, international humanitarian medical aid agency *Médecins sans Frontières* (MSF - Doctors without Borders), issued an authoritative and highly critical report on centres detaining asylum-seekers and immigrants.<sup>30</sup> It was drawn up following research carried out by dozens of medical, legal and social experts and visits conducted between June and November 2003 to all the then existing centres. In its report MSF describes the principle objective of its research as being to evaluate the health and social conditions inside the CPTAs, the state of the structures, management methods, standards of the services provided, respect for the relevant procedures and any differences in the management of the various centres.

MSF's access to the centres was authorized by the Minister of Interior who, following publication of the report in January 2005, said that some of the information was incorrect, that the organization had been given authorization to enter on the understanding that their research would relate specifically to health matters in the centres, in particular the risks posed by SARS (Severe Acute Respiratory Syndrome) and thus provide professional assistance to the authorities in carrying out reforms. He said that MSF had sent its report directly to the media, rather than submitting it to the authorities and that, by acting in such a manner, its real motives were called into question. MSF stated that the authorizations for access to the centres had made no mention of SARS and "explained clearly the methods and purpose" of the visits and that the report had been submitted to the Minister a week before it had been sent to the media.

Subsequently MSF, which had been working in the CPTA on the island of Lampedusa, located south of the main island of Sicily<sup>31</sup>, since 2002, had its requests for continued access to that centre and for access to several other centres confining asylum-seekers and migrants rejected on several occasions. At the same time, the Ministry of Interior has informed parliament that reforms were instituted following MSF's report.

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<sup>30</sup> *Rapporto sui Centri di permanenza temporanea e assistenza- Medici senza frontiere – Missione Italia*: updated and issued in book form in January 2005 under the title: *Centri di permanenza temporanea e assistenza - anatomia di un fallimento, Medici senza frontiere*, 2005 Sinmos editrice.

<sup>31</sup> See Appendix 2 for explanatory note on the special status of this centre.

Although Italian legislation makes specific provision for Italian members of parliament and UNHCR to have access to CPTAs, representatives of both bodies have on a number of occasions, and in particular over the last 12 months, experienced difficulties and delays in gaining access to some centres. Lawyers have also at times experienced problems in gaining access to visit clients. Some Catholic priests engaged in pastoral work with migrants and refugees have also protested publicly about great difficulties in gaining access. As already indicated, non-governmental organizations and groups are rarely allowed to visit the centres and if they do, visits usually take place under restrictions. Journalists are regularly denied access. In recent years and in particular over the last 18 months, the majority of leading NGOs working on behalf of asylum-seekers and immigrants have also been denied access to CPTAs and other centres detaining asylum-seekers and immigrants. As indicated in the *Introduction* to this document, Amnesty International itself has sought, but so far not been granted access to CPTAs and identification centres.

It is difficult to generalize about the current situation within the CPTAs. According to the reports received, despite legislation and directives aimed at standardizing and regularizing the conditions, treatment and rights of detainees at a national level -- the actual structures, conditions and precise regimes differ: the different managing bodies appear often to have their own standards, methods and management philosophy. In addition, since the introduction of Law 189/2002 there has often been uncertainty and confusion over the precise classification and role of some centres. However, it appears clear that the access of many, if not most detainees of the CPTAs to the outside world is extremely limited and in some cases, non-existent.

### **Key areas of concern emerging in recent years**

Some of the CPTAs have inadequate infrastructures: some detainees have been housed in huts and containers unsuitable for stays of more than a few days; some have been exposed to extremes of temperature; some have been held in extremely overcrowded conditions. Some centres have little or no indoor or outdoor recreational space. In some centres detainees have been kept inside for most of the time and allowed only very limited access to the open air.

Dirty and unsanitary conditions have been reported in some centres, as well as instances of failure to provide hygiene products, adequate and clean clothing and bedding to detainees. There are occasional complaints about unsatisfactory food

being served. In May 2005 representatives of four Italian police unions<sup>32</sup> made public statements in which they acknowledged, amongst other things, that there was often a problem of extreme overcrowding in the CPTAs, which had a negative impact on living conditions and expressed concern over an overall lack of resources devoted to the conditions in the CPTAs.<sup>33</sup>

During its fourth periodic visit to Italy between 21 November and 3 December 2004, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited four CPTAs in Sicily: Agrigento, Caltanissetta, Lampedusa and Trapani. It is noteworthy that, following the visit, the Committee stated that during the end-of-visit talks with the Italian authorities, the Ministry of Interior announced the closure of the CPTA at Agrigento, "following an immediate observation made by the delegation". Subsequently, the Minister of the Interior informed parliament that the CPTA at Agrigento had been closed for renovation since October 2004 and that, following an assessment by the Committee that the centre was "inadequate", it had been definitively closed since December 2004.<sup>34</sup> The Committee's report on its visit, which, according to its standard practice, will only be published if the government agrees, was not available at the time of writing.

Differences in the amounts of money which different managing bodies have budgeted per head in their bids to the Prefect's offices to run the centres result in variations in the per diem for each detainee which is allocated to each centre by the Prefect's offices. These variations have raised questions and concerns about adequate and equal treatment for CPTA detainees across the country and fears have been expressed that some of the managing bodies were selected, not on the basis of knowledge and experience of the field but on predominantly economic grounds. Many of the supervisory staff in the CPTAs appear not to have received appropriate or sufficient training to deal with the detainees and their particular needs and problems as foreign nationals and asylum-seekers facing expulsion, and in many cases, as ex-convicts transferred directly from prisons. In addition, some centres housing women reportedly have few or no female staff to cater to their needs.

Lack of relevant training appears to apply, not only to supervisory staff but also to many of the law enforcement officers providing the security for the centres,

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<sup>32</sup> Siap, Siulp Cgil, Anfp, Sap.

<sup>33</sup> Available at [www.ilpassaporto.it](http://www.ilpassaporto.it)

<sup>34</sup> *Resoconto del Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione – audizione del Ministro dell'Interno, 14 dicembre 2004.*

who are, however, said to be operating inside as well as on the perimeters of the some centres on a regular basis, in contradiction to directives laid down by the Ministry of Interior.

There have been a number of allegations of racist abuse, physical assaults and excessive use of force by law enforcement officers and by supervisory staff, in particular during protests and following escape attempts: several criminal proceedings are under way into instances where the detainees have been able to lodge criminal complaints (see *Incidents illustrative of Amnesty International's concerns*). During 2005 several allegations have emerged of physical assault, use of sedative drugs and use of dangerous restraint methods taking place in the context of forcible deportation operations under police escort, during transfers to and from the airport and on board flights (see again, *Incidents illustrative of Amnesty International's concerns*).

There have been reports, particularly highlighted by MSF's Italian branch, of inadequacies in the medical facilities and medical, including psychological and mental health assistance, made available to the detainees in some centres, as well as evidence of excessive prescribing of sedative and tranquillizing drugs, deficiencies in the keeping of medical records, and in measures taken to prevent the spread of infection in the centres.

There are numerous cases of self-inflicted harm amongst CPTA detainees, apparently the result of extreme frustration, uncertainty and anxiety about the future, lack of information and lack of control over their fate, and resentment amongst some of the ex-convicts experiencing what they perceive to be a punishment imposed in addition to prison sentences already served. However, MSF found that psychological support in cases of self-harm was often inadequate or absent.

Reportedly few centres have drawn up internal codes, as required by the Ministry of Interior, and although a 'letter of rights and duties' is apparently given to most detainees on admission, as an information tool it has apparently frequently proved inadequate. In some cases this may be because nothing has been done to overcome difficulties experienced by some detainees who are illiterate, or where the translation or interpretation services in the centre in question are inadequate. Lawyers, members of parliament and NGOs who have gained access to CPTAs have reported that a number of detainees to whom they have spoken have been apparently unaware of the reason for their detention, or of the fact that they are to be expelled or of their right to apply for asylum.

Lack of access to the outside world and difficulties in gaining access to accurate legal advice, qualified lawyers, relevant NGOs and adequate interpretation services, mean that some detainees lack information, or receive incorrect information, on how to access the asylum determination procedure or to challenge expulsion orders. It is alleged that some lawyers are suggested to detainees by the managing organizations but then make little or no effort on their new client's behalf. Other lawyers and NGOs, often with scarce resources, face problems in trying to gain access to facilities and to discover which detainees in which facilities are asylum-seekers in need of assistance. Some centres reportedly lack private areas set aside for interviews and meetings with visitors, including detainees' lawyers, and there are reports of the presence of supervisory staff and law enforcement officers in the vicinity and within earshot of meetings, raising fears of violation of the detainees' rights to consult with a lawyer, in private, like all other people deprived of their liberty.

It has been reported that, in some instances, decisions on forwarding requests for asylum to the decision-making body have been taken on the basis of nationality or even presumed nationality. Failure to examine asylum-applications thoroughly and on an individual basis, as required by international standards, has resulted on occasion in collective expulsions in violation of international refugee and human rights standards (see *Incidents illustrative of Amnesty International's Concerns*).

There have also been claims of some people being detained in CPTAs, despite having been issued with valid residence permits, and thus subjected to illegal detention, in some cases allegedly endorsed by the judge at the authorization hearing, despite protests by the individual concerned.

There have also been reported instances of the presence in some centres of pregnant women and unaccompanied children under the age of 18, in violation of the provisions of the relevant law and directives. Unreliable methods are apparently sometimes used to determine the age of a young person, when this is in dispute.

Some detainees and former detainees have expressed fear at being detained with convicted criminals or criminal suspects being expelled under judicial orders, given that no separate areas exist to house them within the centres. In a report on her June 2004 visit to Italy, including visits to CPTAs and other facilities detaining foreign nationals, as presented to the UN Commission on Human Rights, the UN Special Rapporteur on the human rights of migrants concluded that:

“Better coordination is required between the Ministry of the Interior and the prison authorities over the deportation of foreign prisoners. Holding ex-convicts in

the CPTAs implies an unjustified extension of their sentences and creates problems of personal safety for everyone else held there, particularly women.”<sup>35</sup>

There is seldom clarity for detainees as to whom a complaint or concern about treatment by staff, fellow prisoners or law enforcement officers should be directed: most appear to have no effective access to a complaints mechanism. Most have limited access to independent advice. On occasion, some detainees with complaints are offered access to the criminal justice system by visiting lawyers, NGOs or members of parliament, but most alleged victims are reportedly reluctant to lodge complaints of abuses while they are inside the CPTAs, for fear of retaliation.

In March 2005 the Ministry of Interior assured parliament that it was constantly working to ensure that the guidelines applicable to the management of the CPTAs were being implemented, including through on-the-spot visits by its officials and interventions to modernize or restructure existing centres to improve the way they function.<sup>36</sup>

However, there is no independent monitoring body in existence and none apparently planned.

**“Governments must guarantee maximum transparency in respect of how holding centres operate, by ensuring at least that independent national commissions, ombudsmen and NGOs, lawyers and close relatives of detainees have access to them. In particular, their operation must be regularly monitored through the courts.”**

**“Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights have been respected at all stages.”**

Extracts from the Recommendation, CommDH/Rec (2001)1, issued by the Council of Europe’s Commissioner for Human Rights in September 2001 ‘concerning the rights of aliens wishing to enter a Council of Europe member state and for the enforcement of expulsion orders’<sup>37</sup>

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<sup>35</sup> UN Doc No: E/CN.4/2005/85/Add.3, paragraph 107.

<sup>36</sup> *Senato della Repubblica – Seduta n.761 del 10/3/2005*].

<sup>37</sup> CommDH/Rec (2001)1, Section II, paragraph 10 and Section III, paragraph 12.

## INCIDENTS ILLUSTRATIVE OF AMNESTY INTERNATIONAL'S CONCERNS

### **Regina Pacis CPTA, San Foca, Melendugno, Lecce (Puglia region), 2002**

On 30 November 2002 a delegation, led by a member of the Italian parliament's chamber of deputies, visited the CPTA to examine the detention conditions. The delegates subsequently reported that, during their visit, they collected statements from numerous detainees alleging that many of them had been subjected to ill-treatment on more than one occasion. A series of allegations were made concerning various forms of ill-treatment to which many, the majority of Moroccan nationality, said they had been subjected following an escape attempt from the centre which had taken place on 22 November 2002. The delegation said detainees showed visible signs of injury including bruising and swelling, while some had sutures and other had limbs which were bandaged or in plaster.

Seventeen Moroccan nationals lodged a criminal complaint with the Lecce Public Prosecutor's office in connection with the incidents of 22 November 2002, alleging ill-treatment by the CPTA director (a Roman Catholic priest), members of the supervisory staff, and *carabinieri* providing the security service for the CPTA.

In July 2003, while the investigation opened by the prosecutor was still under way, the Ministry of Interior told parliament that according to the Lecce Prefecture (Government Territorial Office), on 22 November around 40 detainees, all of Moroccan nationality, had tried to escape from the centre but had been intercepted by the *carabinieri*: only three had succeeded in escaping. The Ministry stated that three *carabinieri* and some Moroccans ("*alcuni cittadini marocchini*") had suffered light injuries in the course of the incidents.

The prosecutor's investigation concluded in October 2003 and in January 2004 the CPTA director, six members of the supervisory staff, 10 *carabinieri* and two doctors attached to the CPTA were committed for trial in connection with the November 2002 incidents. The first hearing in the trial was held in 2004 and hearings were still under way at the end of May 2005.

The director, supervisory staff and carabinieri are accused of various offences, including abusing their position of authority, threatening and coercing detainees and subjecting them to physical and psychological ill-treatment, or failing to intervene to prevent the abuses.

The alleged victims of the ill-treatment included 20 identified Moroccan men, identified by name, as well as an unknown number of unidentified detainees. Amongst other things, detainees are said to have been spat at, slapped, punched, kicked and beaten, including with truncheons and, in one case, a pistol butt, force-fed raw pork, in violation of their religious beliefs, in some cases having the pork forced into their mouths with a truncheon. One man, after being spat at, slapped, beaten with a truncheon and force-fed raw pork, had his clothes taken off and was forced to stay in an outside courtyard in the winter cold for several hours. The detainees suffered numerous injuries: including extensive cuts and bruising to various parts of their bodies, including the genitals, heads and faces; several apparently suffered fractures and one man had two of his teeth broken.

The director (as moral author) and the two doctors (as material authors) are accused of drawing up and signing false medical certificates, all dated 23 November 2002, attributing injuries suffered by 11 of the detainees to them deliberately jumping from a high floor of the centre while trying to escape. One of the doctors was apparently not on duty at the centre on the 23 November 2003 and three of the 11 detainees in question had escaped from the centre on 21 November and were not recaptured and returned until 25 November.

At least four of the alleged victims were apparently expelled from the country the day before the delegation's visit and within the following month others were expelled or released from the centre because the maximum limit of their detention period had been reached. However, 11 of the original 17 men who lodged the criminal complaint continue to pursue the criminal proceedings. Most of them sought and, in January 2003, were granted Italian residence permits, renewable on a three-monthly basis, issued on grounds of their involvement in ongoing judicial proceedings.

## **Via Mattei, Bologna CPTA (Emilia Romagna region), 2003-2004**

### *Allegations of physical assault*



Within 48 hours of an escape attempt and violent disturbances inside the CPTA on the night of 2 March 2003 a regional councillor and two parliamentary deputies visited the centre and interviewed detainees. Following these visits, reports of detainees having been subject to physical assaults and excessive force emerged and a criminal complaint was lodged by 11 of the detainees, all of North African origin, except one person from South America. The Bologna Public Prosecutor's office opened an inquiry into the complaint and initially placed 10 police officers, one carabinieri and the senior Red Cross operative in the centre (the Italian Red Cross was managing the CPTA at the time) under investigation (*avvisi di garanzia emessi*) in connection with involvement, either active or passive (through failure to intervene) in the alleged ill-treatment.

The CPTA housed some 65 people at the time of the alleged incidents. It was alleged that, following an escape attempt by two North African detainees, they and a number of other detainees were subjected to repeated physical assault on the night of 2 March. They said that officers wore helmets and struck them with shields and truncheons. Over 10 of the detainees, including one woman, from South America, suffered various significant injuries during incidents, including bruising, cuts to the head, thorax, back and the arms. Some detainees were taken to the casualty ward of a local hospital for treatment: others were treated by the CPTA's own medical service. The visiting deputies reported that they noted blood-stained floors in both the male and female sections of the CPTA. Two of the individuals who were allegedly beaten were expelled from the country shortly after the incidents: one of them was expelled from the country on 5 March, despite having suffered significant injuries. Lawyers representing the complainants eventually won the right for them to remain in Italy during the criminal proceedings, on the basis of residence permits issued on grounds of their involvement in ongoing judicial proceedings.

The detainees said they had started to protest when they saw the two people who had attempted to escape being taken into a room by law enforcement officers and heard their shouts as they were being beaten: they subsequently saw them leave the room bleeding profusely.

In response to a parliamentary question tabled within days of the incidents, the Ministry of Interior maintained that the officers had used reasonable force to prevent an escape attempt and to address violent actions by the detainees and that two officers had suffered injuries caused by blunt instruments, and had been treated at the local hospital.

At the end of 2004 the Bologna Public Prosecutor concluded the criminal investigation, requesting the relevant judge (judge of preliminary investigation) to commit four police officers for trial. He asked for proceedings to be dropped (*richiesta di archiviazione*) against another police officer and a *carabiniere*, on the grounds that the alleged victims had failed to recognize them with certainty as their aggressors. The prosecutor also asked for proceedings to be dropped against the Red Cross operative, on the grounds that he had not participated *directly* in the ill-treatment: lawyers representing the victims entered a formal challenge against this request which is still awaiting a ruling by the judge. Four police officers were committed for trial but the date of the trial had not been fixed by the end of May 2005. No disciplinary action has been taken against them.

*Alleged abusive use of sedative drugs*

In January 2004 a criminal investigation against persons unknown was opened by the Bologna Public Prosecutor's office, following complaints lodged by three former detainees of the CPTA. Darwin Livingston, an Ecuadorian, Lahar Said, a Moroccan, and another foreign national said that they and other detainees had regularly experienced excessive drowsiness and disorientation after eating and drinking at the centre. They alleged that they had been given heavy sedative drugs without their knowledge.

They attached the results of blood analyses to their complaints which indicated that, shortly after their release from the centre, certain prescription drugs were present in their blood in high quantities. There was widespread speculation that drugs had been given to detainees in order to keep them in a sedated and subdued condition.

The Public Prosecutor ordered an extensive inspection of the centre, took samples of the food and drink available to the detainees, seized medical records and checked the drugs held on the premises and administered by the medical personnel of the centre. At the end of June 2004 the Prosecutor concluded that the food and drink taken from the centre for expert analysis had not revealed the presence of the drugs indicated in the detainees' complaints and supporting blood analyses, and that the latter were unreliable. However, these findings and the request to the judge of preliminary investigation (*giudice per le indagini preliminari – Gip*) that no further action be taken (*richiesta di archiviazione*) were formally, but eventually unsuccessfully, challenged by lawyers representing the detainees. The criminal proceedings were closed without further action.

### **Removals via Milan Malpensa airport by law enforcement officers stationed at via Corelli CPTA (Milan), February - March 2005**

On 19 March 2005 a demonstration against fascism and racism, involving some 5,000 people, culminated in a march to the entrance of the city's via Corelli CPTA. Following negotiations lasting around an hour, a delegation of 12 people, including a lawyer and a journalist, was allowed to enter the centre. The delegation was able to speak to four detainees in private for about an hour and, with their agreement, made tape recordings of their accounts of their experiences during recent failed attempts to deport them from Italy, via Milan Malpensa airport. These were made public on 1 April 2005 (available at [www.meltingpot.org](http://www.meltingpot.org)), after the individuals had been deported).

One, an Ecuadorian man, said that two days before the meeting took place law enforcement officers attached to via Corelli CPTA transferred him to the airport. When the plane arrived he told the officers that he did not want to get on the plane and return to his country because of the poverty there and because he had a very sick child whom he could help to support by working in Italy. His hands had been bound behind his back during the transfer operation and he alleged that, when he refused to board the plane, officers seized him, dragged him on board and then beat him, while he was still handcuffed. He said that when they punched him in the face he started to bleed very heavily. His account was supported by one of the other three detainees interviewed (all Brazilian women). She had been taken to the airport with him and was also to have been deported with him. She claimed to have witnessed the assault but both she and the alleged victim indicated that there were no other witnesses. The deportation operation was abandoned and the man was driven back to the CPTA in a police vehicle. The man said that it stopped at a petrol station, by which time he had lost a lot of blood and at that point, the escorting officers hurriedly cleaned him up: they said that they would be taking him back to the airport in a few days and threatened that, if he caused problems about getting on the plane again, they would put adhesive tape over his mouth. He also claimed to have seen officers hitting one of his friends in the stomach in the course of removal from the CPTA early that morning.

One of the Brazilian women said that she was taken off the Alitalia plane which was due to deport her, after protesting to the plane's captain that she did not want to leave. The police then arrived to remove her and took her to their van where she claimed they knocked her head against the window and kicked her in the neck.

A second Brazilian woman said that, on the first attempt to deport her, she told the police that she did not want to leave whereupon they threatened to take her to San Vittore prison (Milan), rather than back to the CPTA. However, she was returned to the CPTA. On the second attempt, in February 2005, she was handcuffed and she and her friend, another Brazilian woman, were escorted on board the plane by two police officers who were to accompany them to Brazil. She said she tried to speak to the captain but the police officers sat at her side, and started putting adhesive tape across her nose and mouth. She said she started to scream and shout and protest that she did not want to return to Brazil without her belongings. The police continued to tape her mouth so that it became difficult for her to breathe and more officers arrived, bringing the number of officers to six in all. She alleged that a hand was kept over her mouth, her head forced down and her neck gripped with such force that it was badly bruised. She claimed the police hit her, swore at her and threatened to kill her if she did not leave. However, she claimed passengers travelling on the same *Alitalia* flight intervened and told the police to stop hurting her.

She added that the police also seized and gripped her friend hard around the throat. She said she feared that her friend might die as her head was attached to the airline seat with adhesive tape. She said that there were a number of witnesses to the incidents which took place on a scheduled 9pm flight to Sao Paolo, Brazil on 15 February 2005.

When she was taken off the plane, all her belongings were left in the luggage hold. When she protested to the police they told her they did not care and again threatened to take her to San Vittore prison and beat her to death.

The same woman said that during one expulsion attempt she had seen another person completely immobilized with adhesive tape put all around their body, including the face and neck and that, when the person moved, they appeared in danger of suffocating as the tape wound around the neck was also bound to the seat.

The third Brazilian woman said she had arrived in Italy on a three-month tourist visa on 24 January 2005 but went to the relevant police office to apply for a regular residence permit well within the relevant time limit. On 27 January the police issued her with a residence permit expiring on 22 April. However, on 10 February, the police, including the officer who had issued the permit, came to her place of residence, confiscated the permit and after holding her in the police station for a day, transferred her to the CPTA. She said that she gave this information to the judge when she appeared before him but that the judge told her that he realized she was in the country legally but that he was simply paid to endorse the decision which had

already been made. She subsequently filed an appeal against the expulsion order but, at the time of the delegation's visit, was still awaiting its outcome.

She said that when she learnt that the police intended to expel her she asked them to take her to her place of residence to collect her belongings. However, the request was refused and she was told that someone at her place would have sent her belongings to Brazil: she protested that this was not possible as she did not know anyone there. Thus, when she was escorted to a plane on 17 March 2005, she protested that she did not want to leave because her Brazilian identity documents and her money had been left at the place where she had been living in Italy and, as the flights from Italy to Brazil arrived in Sao Paolo or Rio and she lived far from these cities, she did not know how she would manage "without money, without anything". At that point she showed the delegation her arms, which bore marks of injuries she had inflicted on herself in order to be taken off the plane

On 1 April 2005 it was reported that the four individuals interviewed by the delegation, and who had lodged a criminal complaint about their treatment by the police, had been returned to their countries of origin. One of them, the Ecuadorian man, phoned his lawyer in Italy and reported having felt extremely sleepy after the evening dinner at the CPTA and claimed not to remember anything more until he woke in Ecuador, leading to speculation that he might have been given sedative drugs before the expulsion operation.

### **Crotone Sant'Anna identification/reception centre (Calabria), March 2005**

Hundreds of migrants, of various nationalities, who were not returned to Libya immediately and directly from the Lampedusa centre in mid-March 2005 (see entry on *Lampedusa Airport zone CPTA* -- below) were transferred to the Crotone Sant'Anna military airport site, the location of an identification/reception centre and a CPTA, and apparently held in the identification/reception centre. Numerous people participated in escape attempts from the centre during the remainder of the month, many of them successfully.

Members of the Italian parliament and lawyers who gained access to the identification/reception centre on 24 and 25 March subsequently reported that many of the detainees were being held without any judge having authorized their detention. A number of the detainees appeared to be under the age of 18, including a disabled child accompanied by its parents. In addition they reported the allegations of

detainees that, during the escape attempt about a week earlier, police officers had repeatedly beaten detainees (including women and young boys, apparently minors) and had aimed at their heads as well as other parts of their bodies. In addition they had subjected detainees to blows with what the detainees described as “sticks which have got electricity”.

In support of their claims the detainees displayed what appeared to be uniform burn marks on their backs and on their hands. The visitors also observed six detainees, each with a leg in plaster or heavily bandaged. The police denied using the kind of weapons alleged by the detainees and stated that electric shock truncheons did not form part of the equipment of the Italian police. However, the police provided no clear explanation of the incidents and how the detainees might have incurred their injuries.

### **Ragusa-Somicem CPTA (Sicily) – April 2005**

On 2 April 2005, in the context of a European day of action for freedom of movement for migrants, a protest demonstration against the Ragusa CPTA took place in the town and some thousand people participated in a peaceful march to the entrance of the centre. A delegation of six women, including NGO representatives, an interpreter and a lawyer experienced in the immigration field in Sicily, was given permission to pass through the gates into the general entry area.

In an interview published on 7 April 2005 (available at [www.ilpassaporto.it](http://www.ilpassaporto.it)), the lawyer said that at the time of the visit the centre contained only female detainees, including nationals of Liberia, Ghana, Colombia, the Dominican Republic, Romania and Moldova: the majority of detainees were of African origin.

The members of the delegation were not allowed to enter the detainees’ living area and they were apparently escorted by police officers throughout the 25 minutes they were allowed to remain in the centre.

The women they met complained of the dirtiness of their living area, of the daily supply of only one and a half litres of water to be shared by two people, of bad quality food causing them stomach problems and of inadequate health and medical assistance and claimed that an anti-inflammatory drug was prescribed for most of the medical problems raised by detainees.

The lawyer reported that most of the women with whom they were able to speak had in the past been in possession of residence permits, issued for work or study reasons: some said they had also been granted refugee status. However, a number of women claimed that, at the moment they tried to renew their residence permits, the police authorities had, without warning, served expulsion orders on them and they had been sent to the CPTA.

The women claimed that the lawyers assigned to them by the state did not visit the CPTA more than twice a month. The lawyer found that the women she met did not appear to have been informed about their rights and sought information from her about their legal situation and asked for her help in representing them. Although the women had the right to contact a lawyer themselves, most had been brought to the Ragusa CPTA from various other towns and cities and, without knowledge of the local area had little chance of being able to find a lawyer themselves, without advice and assistance. The lawyer reported that as the visit progressed she became surrounded by women asking her for legal assistance but was able to get formal authorization to act on behalf of only six women because the police intervened to oblige the delegation to leave the centre. Within a few days the lawyer said she received news that four of the six women had been removed from the centre: she assumed they had been repatriated.

## **Lampedusa Airport zone CPTA (Sicily), 2004-05**

This centre is located on the island of Lampedusa, Italy's southernmost territory, lying some 205 kilometres off the coast of the main island of Sicily and some 300 kilometres away from Libya. It has been described as a CPTA by the government but as one with the main function of providing "initial assistance" and serving "as a clearing station". (For further information see *List of CPTAs and Identification centres known to Amnesty International* -- Appendix 2).

### *Access to asylum procedures and freedom from arbitrary expulsion*

Over the last year Amnesty International has expressed fears that the Italian government's attempts to deal with arrivals by sea are seriously compromising the fundamental right to seek asylum and the principle of *non-refoulement*, which prohibits the forcible return of anyone to a territory where they would be at risk of serious human rights violations. Article 3 of the UN Convention against Torture

prohibits the return of *any* person to a country where they risk torture or cruel, inhuman or degrading treatment or punishment. Article 13 of the International Covenant on Civil and Political Rights, amplified by General Comment 13/27 of the UN Human Rights Committee, prohibits the arbitrary expulsion of *any* foreign national (that is, whether with or without an asylum claim). Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms also prohibits the Italian government from expelling entire groups of people without properly considering each individual's situation, yet this is precisely what it appears to have been done on several occasions in removing people from the Lampedusa centre. The safeguards which domestic legislation and regulations have put in place with regard to the carrying out of expulsion and refusal of entry at the border orders, such as access to UNHCR, to lawyers, competent interpretations and the need for judicial authorization, appear to have been repeatedly ignored.

#### Events of October 2004

Between 29 September and 8 October 2004 a total of 1,787 foreign nationals, including men, women and children -- believed to be of various nationalities -- reached the island of Lampedusa, after apparently setting out from the coast of Libya. They were detained in the Lampedusa centre which was then closed to outside visitors, on security grounds: no public telephone was available for the use of detainees who were effectively cut off from the outside world.

On 4 October 2004 UNHCR expressed "deep concern" over the fate of the new arrivals, following reports that many were being sent back to Libya by air "without proper assessment of their possible protection needs". It said that all those requesting asylum "should have access to a fair procedure to assess their possible protection needs under the 1951 Refugee Convention". UNHCR had been told by Italian officials that people from Eritrea, Somalia and Ethiopia were being admitted to the asylum process, but that other nationalities -- believed to be primarily Egyptians -- were being sent to Libya. The organization said that it had requested both the Italian and Libyan authorities to grant it access to the people in question and had a staff member on standby in Lampedusa. However, UNHCR was still awaiting a response to its requests.

As Amnesty International underlined in October 2004, Libyan nationals risked serious human rights violations on return to Libya and non-Libyan nationals risked detention on charges including illegal entry into and exit from Libya.



UNHCR subsequently reported that it was not until 6 October 2004, some five days after requesting authorization and, “following the return by air of more than 1,000 persons to Libya”, that it was granted access to Lampedusa centre which it then entered on 7 October. Its preliminary evaluation was that “the rushed methods used to sort out the incoming persons by nationality” had “not allowed individual persons from all national groups concerned to claim asylum”.

Two members of the Italian senate were granted authorization to enter the centre on 7 October 2004, by which time few people were still left in the centre.

According to the Ministry of Interior, a total of 1,153 people were sent to Libya: 544 people were transferred to other centres in Italy in order to present asylum applications.

UNHCR was not allowed access to the people Italy sent back to Libya.

The vast majority of detainees who passed through the centre between 29 September and 7 October 2004 appear, during their detention there, to have been offered little or no access to advice on the asylum determination process and no adequate legal assistance.

The Ministry of Interior has maintained that the processing and removal of the people held in the Lampedusa centre in October 2004 was carried out in conformity with the relevant international standards.

#### Events of March 2005

Between 13 and 21 March 2005, a total of 1,235 foreign nationals -- believed to be of various nationalities -- reached the island.

On the evening of 14 March 2005 UNHCR requested access to the Lampedusa centre, but this was denied on security grounds. However, subsequently there were reports of Libyan officials being allowed into the centre.

On 16 March the Italian Minister of the Interior informed parliament that Italy was acting in full compliance with domestic law and international human rights and refugee law. He asserted that almost all of the foreign nationals who had arrived on Lampedusa were Egyptian, but had claimed to be Palestinian or Iraqi. He said that Libyan officials had been allowed into the centre in order to collaborate with the Italian authorities in identifying people traffickers.

On 17 March 180 people were removed from the Lampedusa centre and flown to the Libyan capital, Tripoli, escorted by Italian law enforcement officers.

In a press release issued on 18 March 2005, UNHCR expressed concern that, due to the rushed methods used, individuals who might have a valid asylum claim were not receiving a proper assessment. UNHCR also underlined that “it is far from clear that Italy has taken the necessary precautions to ensure that it is not sending back any *bona fide* refugees to Libya, which cannot be considered a safe country of asylum”. It pointed out that it had still not gained access to the people Italy had returned to Libya from Lampedusa in October 2004. UNHCR also expressed concern that, if there were any Libyan asylum-seekers in the centre during the visits of Libyan officials, such a practice could run counter to basic refugee protection principles, and could in itself constitute grounds for a valid refugee claim *sur place*. UNHCR “deeply regretted the continued lack of transparency on the part of both the Italian and Libyan authorities”.

UNHCR was not granted permission to have access to the Lampedusa centre until the evening of 21 March 2005: by the time the organization entered the centre on 24 March only some 80 people were still being held there.

In mid-April 2005 the Ministry of Interior said that to date, 494 of those arriving in March had been returned to Libya, 76 had been sent to Egypt.

On 6 April, following an application filed on behalf of 79 named individuals, all male, who had reached Lampedusa in March, the majority of whom are presumed to have been removed from Italy within days of their arrival, the European Court of Human Rights requested certain information from the Italian government. The court, wishing to check whether the procedures followed in the cases in question were in conformity with the European Convention on Human Rights and with Italy’s own domestic legislation, requested, within the month, clarification of the identification and expulsion process followed.

Italy’s response reportedly indicated, amongst other things, that 14 of the applicants had been expelled before the Court’s request had been received and that 11 of them were to be expelled shortly. However, it gave no indication of the fate of the other 54 individuals. The Italian lawyers representing them said that they were, however, known to have been in the Lampedusa centre on 1 April 2005: one of the lawyers had accompanied an Italian senator who had been allowed to enter the centre on that day and had met them, recorded their names and had been granted the relevant authorization by the men to act as their legal representative.

On 10 May 2005 the Court requested the Italian authorities to suspend the planned expulsion of the group of 11 applicants until further notice.

On 14 April the European Parliament adopted a ‘Resolution on Lampedusa’ in which, amongst other things, it expressed concern at the “collective expulsion of migrants” from Lampedusa between October 2004 and March 2005, at the refusal of the Italian authorities to give UNHCR access to the Lampedusa centre, even though it had given such access to Libyan officials. It also expressed concern at the fate of the hundreds of asylum-seekers returned from Lampedusa to Libya, “since the country is not a signatory to the Geneva Convention on Refugees, has no functioning asylum system, offers no effective guarantees of refugee rights and practices arbitrary detention and expulsion: and whereas the people expelled are usually handcuffed and do not know what their destination is”. In addition, it expressed concern at “the treatment and deplorable living conditions of people held in camps in Libya as well as by recent massive repatriations of foreigners from Libya to their countries of origin in conditions guaranteeing neither their dignity nor their survival” as well as at “the reports from Libyan sources of 106 deaths resulting from these expulsions”.

The European Parliament called on Italy (and all Member States) to refrain from collective expulsions of asylum-seekers and irregular migrants, to guarantee that asylum applications be examined individually and to adhere to the *non-refoulement* principle. It found the expulsions by Italy to Libya to “constitute a violation of the principle of *non-refoulement*” and that the Italian authorities had “failed to meet their international obligations by not ensuring that the lives of the people expelled by them are not threatened in their countries of origin”. It called on the authorities to give UNHCR “free access to the Lampedusa centre and the people held there, who might be in need of international protection”.

In the first weeks of May 2005 over 1,000 people reached Lampedusa, either directly or after first arriving on the island of Linosa (another island off mainland Sicily) and being transferred to Lampedusa. On 16 May 2005 the Italian media reported that some 50 people had apparently been returned to Libya from Lampedusa about two days earlier. A flight departed from Lampedusa on 14 May 2005 but at the time the Italian authorities indicated that its destination was Crotona Sant’Anna military airport (Foggia - Calabria Region), the site of an identification/reception centre and a CPTA. On 21 May the Italian media reported that a flight carrying an estimated 60 people had departed from Lampedusa earlier that day and that its destination was believed to be Libya. By the end of May the government had neither confirmed nor denied these reports.

### Detention conditions

The UN Special Rapporteur on the human rights of migrants, in her report on her June 2004 visit to Italy, including a visit to Lampedusa CPTA<sup>38</sup>, expressed “surprise on finding that not a single immigrant was being held in the Lampedusa CPTA on the day of her visit. According to the Centre’s official register, 62 people had been transferred the previous day to the Crotone S. Anna CPTA (Calabria). During the month, the register showed that up to 329 individuals were in the CPTA on the same day, although the Centre’s maximum capacity was 190.”<sup>39</sup>

She reported that: “The Lampedusa CPTA was built in 1998 as a provisional centre and since then the facilities have remained the same, although improvements have been made, including the infirmary and a prayer space for Muslim immigrants. The immigrants continue to be housed in huts and containers. In the Special Rapporteur’s opinion, the location of the Centre, adjoining the airport, gives no guarantee of security. The plan to build a new centre in the interior of the island appears to have been suspended because of protests from the population. The Ministry of the Interior reported that it was negotiating a transfer to another part of the island with the Ministry of Defence.”<sup>40</sup>

The Special Rapporteur concluded that: “The Lampedusa CPTA facilities are clearly inadequate for the frequent landings of large groups of immigrants on the island. Action in response to such landings cannot be improvised or devised under the pressure of ad hoc conditions, and the human rights obligations to which Italy is internationally committed must be met ... ”<sup>41</sup>

She recommended that: “Urgent steps should be taken to ensure health assistance for mass arrivals in Lampedusa. The priority of the Lampedusa CPTA should be the correct identification of everyone arriving on the island, not the immediate deportation of newly-arrived immigrants.”<sup>42</sup>

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<sup>38</sup> UN Doc No: E/CN.4/2005/85/Add.3

<sup>39</sup> Ibid, paragraph 53.

<sup>40</sup> Ibid, paragraph 54.

<sup>41</sup> Ibid, paragraph 87.

<sup>42</sup> Ibid, paragraph 105.

Between 29 September and 8 October 2004 a total of 1,787 foreign nationals reached the island of Lampedusa and passed through the centre, with an official maximum holding capacity of 190 people. Two members of the Italian senate who gained access to the centre on 7 October 2004, by which time few people were still left in the centre, reported that, as a result of the severe overcrowding, people had been obliged to sleep on the floor in the open air, without sheets or other covers, and that the sanitary arrangements were inadequate and posed health risks.

In its response to report of the Special Rapporteur on the human rights of migrants<sup>43</sup> the government stated that the Lampedusa centre was “entrusted with ‘first aid and assistance’ (DPR 394/1999) to nationals from outside the European Union who land on the island, and is therefore fully operational only during the short period which elapses between the arrival of the illegal immigrants on the island and their transfer by boat or aircraft to other centres, in Sicily or on the mainland. Obviously, this immediate aid and triage are designed to prevent overcrowding among the users of the centre, which would cause distinct discomfort for the individuals concerned, and to enable the inhabitants of Lampedusa or pursue their daily activities unhindered.”

It went on to state that “the present structure is scheduled to be abandoned” and that “Administrative procedures involving the Ministry of Defence are now entering the final phase with the acquisition of the area containing the Adorno army barracks, the aim being to build a more appropriate structure from the logistical standpoint with a larger capacity”

Between 13 and 21 March 2005, a total of 1,235 foreign nationals reached the island. According to the government, although recognizing a situation of overcrowding in the centre, each person was assured medical and health assistance, clothing, food and personal hygiene products.

A press release issued by UNHCR on 18 March 2005, while it had a senior staff member on the island still awaiting a positive response to UNHCR’s 14 March request for access to the centre, expressed regret that “the Italian authorities have, despite recent experiences, made no attempt to enlarge the reception centre in Lampedusa. With a capacity of a mere 190, the centre is easily overwhelmed, creating an air of crisis that is perhaps not strictly necessary”.

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<sup>43</sup> *Note verbale* dated 16 March 1985, UN Doc No: E/CN.4/2005/G/19

On 20 March 2005 two members of the Italian senate gained access to the centre, but only its offices, infirmary and ‘women’s zone’. Some members of a local NGO, the Sicilian League against Racism (*Rete Antirazzista Siciliana*), said that on the same day they had managed to speak to some detainees but at a distance, through perimeter barriers. It was subsequently reported that there were at that time some 600 people being held in the centre, that they were being kept in unhygienic conditions, with no hot water and the 10 toilets not functioning, and that some detainees who had been held for five to seven days had still not been given mattresses or covers.

In the first weeks of May 2005 over 1,000 people reached Lampedusa, either directly or after first arriving on the island of Linosa (another island off mainland Sicily) and being transferred to Lampedusa. Reports of unsatisfactory and deteriorating detention conditions due to overcrowding again began to emerge.

For further relevant Amnesty International information – see the documents listed below.

The following documents are available at [www.amnesty.org](http://www.amnesty.org).

- *Italy: Government must ensure access to asylum for those in need of protection* (AI Index: EUR 30/001/2004), October 2004;
- Amnesty International Urgent Action - Italy/Libya (AI Index: EUR 30/001/2005), March 2005.
- *Amnesty International calls on the European Commission to take action against Italy* (AI Index: IOR 61/007/2005).
- *Amnesty Concerns in Europe and Central Asia: July- December 2004, Italy* (AI Index: EUR 01/002/2005).
- *Amnesty International Report 2005*, entries on Italy and Libya
- *Libya: time to make human rights a reality*, AI Index: MDE: 19/002/2004
- *Libya: Refugees face imminent expulsion*, 23 December 2004, AI Index: MDE 19/022/2004

Available at [www.amnesty-eu.org](http://www.amnesty-eu.org), together with other information on relevant Amnesty International interventions at the EU level, including:

- *Immigration cooperation with Libya: the Human Rights Perspective*, 12 April 2005.

Available at [www.amnesty.it](http://www.amnesty.it).

- Detailed information, in Italian, on relevant Amnesty International interventions addressed to the Italian authorities.

## RECOMMENDATIONS

Amnesty International is urging the Italian authorities to:

- ▶ ensure that the 20-point Guidelines on all stages of the ‘forced return’ process [CM (2005) 40], adopted by the Committee of Ministers of the Council of Europe on 9 May 2005, are disseminated widely to all relevant domestic bodies and fully implemented (see Appendix 2 for the full text);
- ▶ ensure that detention procedures and practices in all facilities where irregular migrants and asylum-seekers are deprived of their liberty conform to existing international standards for the treatment of persons deprived of their liberty, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners; and the European Prison Rules adopted by the Council of Europe;
- ▶ ensure, therefore, that the right of prompt access to a lawyer and to talk to a lawyer in private is guaranteed in *practice*, as well as in law, for all irregular migrants and asylum-seekers deprived of their liberty and that, in addition, accurate lists of legal services provide by lawyers and relevant NGOs providing legal advice are prominently displayed in all facilities detaining such individuals;
- ▶ ensure the full implementation of the recommendations adopted by the Council of Europe’s Committee for the Prevention of Torture and Commissioner for Human Rights regarding the rights and detention conditions for irregular migrants and asylum-seekers, including recommendations for maximum transparency in the operation of centres in order to ensure respect for fundamental human rights, and recommendations on treatment during forcible deportation operations, including recommendations on methods of restraint;
- ▶ ensure implementation of the recommendations of the UN Special Rapporteur on the Human Rights of Migrants (see UN Doc No: E/CN.4/2005/85/Add.3), following her June 2004 visit to Italy, with particular reference to those recommendations relating to CPTAs and identification centres, to the development of voluntary return programs for immigrants (monitored by a competent, independent body with a protection mandate), and to the ratification by Italy of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

### **Concerning asylum-seekers**

- ▶ ensure the introduction of a comprehensive, specific law on asylum, in full conformity with international refugee standards, as repeatedly requested by the UN High Commissioner for Refugees (UNHCR);
- ▶ ensure full implementation of Italy's obligations under Protocol 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which the expulsion of entire groups of foreign nationals, without properly considering each individual's situation, is prohibited;
- ▶ ensure that current practices regarding the detention of asylum-seekers are brought in conformity with UNHCR's revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers;
- ▶ ensure that all asylum-seekers whose detention is found to be justified on grounds of legality, necessity and proportionality have access to UNHCR without delay and that all asylum-seekers whose detention cannot be justified under international human rights law and refugee standards are immediately released;

### **Concerning monitoring of standards**

- ▶ ensure that, in line with international standards, a permanent, independent monitoring and inspection body is mandated to make regular, unannounced and unrestricted visits to all facilities confining irregular migrants and asylum-seekers (including CPTAs, identification centres, airport cells and international transit zones, and all vehicles used to transfer such individuals while escorted by law enforcement officers) and ensure that international and domestic standards are adhered to;

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988 are not merely advisory. The Body of Principles call upon governments to take definite steps to implement and enforce their provisions. The Italian authorities should, therefore, in line with Principle 29, ensure that

- places where irregular migrants and asylum-seekers are deprived of their liberty are visited regularly “by qualified and experienced persons” in order to “supervise the strict observance of relevant laws and regulations”;

- the inspectors are “appointed by and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment”;



- all detainees “have the right to communicate freely and in full confidentiality” with the inspectors;

▶ ensure that Italy, which has already signed the Optional Protocol to the UN Convention against Torture, proceed with ratification, thus committing itself to the establishment of an effective domestic mechanism to inspect *all* places where people are deprived of their liberty;

### **Concerning complaints mechanisms**

▶ review the present procedures for complaints concerning the treatment of detainees in CPTAs and identification centres and their treatment during deportation operations, with a view to ensuring that they have recourse to accessible, effective and impartial complaints procedures;

▶ establish and implement effective measures to prevent people from being dissuaded from making complaints and ensure that complainants and witnesses receive protection against any form of intimidation or harassment;

▶ ensure that instructions about complaints procedures are prominently displayed in all CPTAs and identification centres, in a variety of languages. Ensure that the standard ‘Letter of rights and duties’ to be provided to people on admission to the CPTAs and identification Centres is amended to include the right to lodge complaints about their treatment and the relevant procedures to follow;

### **Concerning investigation of serious human rights violations**

▶ ensure that prompt, thorough, independent and impartial investigations, in line with best practice for such investigations, are carried out into all allegations of serious human rights violations by law enforcement officers and supervisory staff in CPTAs and identification centres, in accordance with international standards;

▶ when there is reasonable ground to believe that torture or cruel, inhuman or degrading treatment has occurred, ensure the initiation of an investigation, even if no formal complaint has been made by the alleged victim;

▶ ensure that those reasonably suspected of being responsible for serious human rights violations are brought to justice in the course of fair proceedings and sentences imposed which are commensurate with the gravity of the crime;

► ensure that alleged victims and witnesses to serious human rights violations are not removed from the country while investigations into the alleged incidents are under way.

### **Concerning Staffing and Training**

► With regard to law enforcement officers performing security and escort duties, ensure that a review of relevant regulations and training is undertaken with a view to ensuring further that:

- officers are fully trained on the legal and proportionate use of force and that vigorous measures are taken to address racist or discriminatory attitudes and behaviour among officers;

- officers have clear instructions that the force and means of restraint used in expelling or deporting a person should be no more than is reasonably necessary and that it is entirely unacceptable for a person subject to expulsion to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so;

- methods of restraint that impede breathing and involve a significant risk to life (such as use of adhesive tape and those capable of causing positional asphyxia) are specifically banned and any administration of sedative drugs is in accordance with purely medical criteria in line with Principle 5 of the UN Principles of Medical Ethics;

- during expulsion and deportation operations under escort all detainees are provided regularly with food and drink and have ready access to toilets and are treated with respect for their human dignity;

► With regard to supervisory staff

- ensure that directors and staff members are carefully selected and receive appropriate training in the human rights of people deprived of their liberty and the rights of asylum-seekers. In accordance with the recommendations of the Council of Europe's Committee for the Prevention of Torture, staff supervising foreign nationals detained under aliens legislation should "As well as possessing well-developed qualities in the field of inter-personal communication ... be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural change) and to take appropriate action";

- ensure that female staff are used in centres where women are housed, in order to respect cultural values and improve the physical protection of women in the centres, is recommended;

▶ With regard to medical personnel employed in the CPTAs and identification centres

- Ensure that they are trained with regard to the specific features of the provision of health care in a detention facility and the particular needs of asylum-seekers, including psychological needs.

**Concerning Children**

▶ Ensure that unaccompanied children arriving in Italy enjoy all the rights guaranteed under the UN Convention on the Rights of the Child and other international standards on the care and protection of unaccompanied children.

## **APPENDIX 1: Letter of 14 March 2005, seeking access to facilities detaining asylum-seekers and irregular migrants, addressed to the Minister of Interior by the Secretary General of Amnesty International**

Onorevole Giuseppe Pisanu  
Ministro dell'Interno  
Ministerio dell'Interno  
Palazzo Viminale  
Via Agostino Depretis 7  
00184 Rome  
Italy

14 March 2005

Dear Minister,

I am writing in connection with a request to visit facilities used to confine asylum-seekers and unauthorized immigrants which the Italian Section of Amnesty International (AI Italy) addressed to the Department for Civil Liberties and Immigration (*Dipartimento per le Libertà Civili e l'Immigrazione*) in January 2005.

In a letter dated 24 January and in a meeting of 24 February, AI Italy informed the Department of recently initiated Amnesty International research concerning the human rights of migrant children held in facilities where the identities and nationalities of foreign citizens arriving in Italy are established, and their right of entry to Italian territory and the basic admissibility of any asylum applications are checked. AI Italy sought permission for Amnesty International researchers to carry out visits to such facilities between February and September 2005 and to speak to child inmates, including unaccompanied children, and relevant family members. The Department refused AI Italy's request by a letter of 4 February 2005 and confirmed its position during the 24 February meeting. A copy of the relevant exchange of correspondence is attached.

Amnesty International recognizes that states have a sovereign right to control the entry, residence and expulsion of aliens. This right must, however, be exercised in accordance with international refugee and human rights law and standards,

including the principle of proportionality and non-discrimination, and cannot be at the expense of the human rights of asylum-seekers or migrants, whatever their legal status.

In its communications with the Department, AI Italy explained that the organization's current research aims to study and report on the legal situation and general welfare of children held in the facilities, in the light of relevant national and international standards; to draw the attention of the relevant Italian authorities to any practices and situations not in line with such standards and to make relevant recommendations for improvement or reform.

In seeking access to facilities where asylum-seekers and unauthorized immigrants are confined, Amnesty International bears in mind that, according to international refugee standards, as set out by the Executive Committee (EXCOM) of the United Nations High Commissioner for Refugees (UNHCR) and in UNHCR Guidelines, the detention of asylum-seekers is "inherently undesirable". States may resort to their detention exceptionally, on specific grounds prescribed by law, and in conformity with the general norms and principles of international human rights law, only when other measures short of detention will not suffice, and only for a minimal period.<sup>44</sup>

International standards, as enshrined in the Convention on the Rights of the Child, prohibit the unlawful or arbitrary deprivation of children's liberty. Article 37 (b) of the Convention provides for the arrest, detention or imprisonment of a child to be in conformity with the law and to be used only as a measure of last resort and for the shortest appropriate period of time. Every child deprived of liberty is to be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.

International refugee standards<sup>45</sup> reflect these principles. They recognize that child asylum-seekers, in particular unaccompanied minors, have special protection

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<sup>44</sup> See EXCOM Conclusion on Detention of Refugees and Asylum Seekers, No 44 (XXXVII), 1986; UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers (February 1999); Recommendation (2005) 5 of the Council of Europe Committee of Ministers 'on measures of detention of asylum seekers' and Article 5 (f) of the European Convention on Human Rights and Fundamental Freedoms.

<sup>45</sup> Including the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the detention of asylum-seekers (February 1999); UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997 and Recommendation (2003) 5 of the Council of Europe Committee of Ministers 'on measure of detention of asylum seekers'.

needs due to their particular vulnerability, and emphasize that unaccompanied children should not, as a general rule, be detained.

In order to guarantee full respect for the fundamental human rights of people deprived of their liberty, Amnesty International believes that facilities where asylum-seekers and migrants are confined, especially those holding children, should be open to outside scrutiny from concerned organizations and, in particular those with long-standing experience of the human rights of asylum-seekers, refugees, migrants and detainees.

As you will be aware, international standards, such as the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>46</sup>, also underline the importance of contact with the outside world for detainees and prisoners. These standards apply equally to detained asylum-seekers and unauthorized immigrants.

In its 7<sup>th</sup> General Report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) expressed its main concerns and views regarding the treatment of “immigration detainees” – defined as “foreign nationals deprived of their liberty under aliens legislation”.<sup>47</sup> In paragraph 31 the CPT states that “immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organizations.”

We would also like to draw your attention, in particular, to Recommendation CommDH (01) 1, which the Council of Europe’s Commissioner for Human Rights addressed to Council of Europe member states ‘concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsions orders’ in September 2001. The Recommendation underlines, in Article 9, that “On no account must holding centres be viewed as prisons” and, in Article 10, that “Governments must guarantee maximum transparency in respect of how holding centres operate, by

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<sup>46</sup> See Principle 19 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly resolution 43/173 of 9 December 1988: “A detained or imprisoned person shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”

<sup>47</sup> CPT/Inf (97) 10

ensuring at least that independent national commissions, ombudsmen and NGOs, lawyers and close relatives of detainees have access to them ...”.

The desirability of allowing non-governmental organizations (NGOs) access to facilities holding asylum-seekers was further underlined in a recommendation adopted by the Council of Europe Committee of Ministers in April 2003. In Article 18 of Recommendation (2003) 5 on ‘measures of detention of asylum seekers’ the Committee of Ministers asks member states to apply the following principle: “Asylum seekers should be allowed to contact and, wherever possible, receive visits from relatives, friends, social and religious counsellors, non-governmental organisations active in the field of human rights or in the protection of refugees or asylum-seekers, and to establish communication with the outside world.”

The refusal by the Department for Civil Liberties and Immigration of AI Italy’s request does not appear to be in line with such Council of Europe recommendations. Nor does it appear to be in line with the emphasis which the Italian government has itself laid on the goal of ensuring “the greatest maximum transparency”<sup>48</sup> in the management of detention facilities for foreigners. Allowing NGOs such as Amnesty International, with established expertise in the rights of asylum-seekers, unauthorized immigrants and detainees, to visit detention facilities for foreign citizens appears fully in line with the goal of transparency.

Amnesty International also believes that, allowing established NGOs with relevant expertise to visit detention facilities holding asylum-seekers and unauthorized immigrants in Italy is all the more important, given that Italy lacks an independent national human rights institution (NHRI) conforming to the so-called ‘Paris Principles’ relating to the functioning of NHRIs, adopted by the UN General Assembly in 1993, and that it has not yet established a permanent independent monitoring and inspection system by “qualified and experienced persons” to supervise the strict observance of relevant laws and regulations in detention facilities, in line with Principle 29 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

We would also point out that in recent years governments in a number of countries, both within the European Union (such as Spain and the United Kingdom) and elsewhere (including the USA) have granted Amnesty International permission to visit detention facilities holding asylum-seekers and unauthorized immigrants.

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<sup>48</sup> Paragraph 274, Italy’s fifth periodic report to the (UN) Human Rights Committee – UN Doc: CCPR/C/ITA/2004/5.

We urge you, therefore, to reconsider the decision of the Department for Civil Liberties and Immigration and grant Amnesty International access to facilities used to confine asylum-seekers and unauthorized immigrants. Amnesty International is seeking your assurance that the Italian government is willing, in principle, to allow the organization to visit such facilities, with prior notice, in order to assess the human rights situation of the residents, in particular migrant or asylum-seeking children. Amnesty International seeks further assurance that during such visits its researchers would be able to speak to residents in private, subject to their agreement and to reasonable conditions to ensure security and good order.

We trust that it will be possible to resolve this matter and pursue a constructive dialogue concerning the human rights of asylum-seekers and unauthorized immigrants.

A copy of this letter is being sent, for information, to Minister Giuseppe Calvetta, President of the Inter-Ministerial Committee for Human Rights.

Yours sincerely,  
Irene Khan, Secretary General



## **APPENDIX 2: List of CPTAs and identification centres known to Amnesty International**

### **CPTAs – TEMPORARY STAY AND ASSISTANCE CENTRES**

#### **1. Agrigento (Sicilia): ASI/Contrada San Benedetto**

In December 2004 and again in April 2005, the Ministry of Interior informed parliament that the CPTA at Agrigento had been closed for renovation since October 2004. It had been “definitively” closed since December 2004, following observations made by the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment at the end of its the fourth periodic visit to Italy in December 2004. There have been recent unconfirmed reports of plans to reopen the centre, as an enlarged centre, during 2005.

**2. Agrigento (Sicilia): Airport zone, Lampedusa** (Lampedusa island lies some 205 kilometres off the coast of the main island of Sicily and is Italy's southernmost territory).

This centre has a special status. In its fourth periodic report on its implementation of the UN Convention against Torture (UN Doc. No: CAT/C/67/Add.3) of April 2004, the government explained the “main function” of this centre as being “to provide initial assistance and serve as a clearing station” and in statements made to parliament on 10 March 2005 (*Senato della Repubblica - Seduta n. 761*), the Ministry of Interior confirmed that Lampedusa was a CPTA, with its main function as described above. The government’s 16 March 2005 response (UN Doc No: E/CN.4/2005/G/19) to the report issued by the UN Special Rapporteur on the human rights of migrants on her 2004 visit to Italy clarified that the centre was entrusted with “first aid and assistance” under the provisions of Article 23 of Presidential Decree (DPR) 394/1999 relating to CPTAs.

**3. Bologna (Emilia Romagna): ex-caserma Chiarini, via E Mattei**

**4. Brindisi (Puglia): Contrada Restinco**

**5. Caltanisseta (Sicilia): Contrada Niscima, Pian del Lago**

**6. Catanzaro (Calabria): Coop. Malgrado Tutto, Lamezia Terme – Pian del Duca**

**7. Crotone (Calabria): Sant' Anna, Isola Capo Rizzato**

**8. Milano (Lombardia): via Corelli**

**9. Modena (Emilia Romagna): viale La Marmora**

**10. Otranto, Lecce (Puglia) – Centro Don Tonino Bello**

This centre has a special status. In statements made to parliament on 10 March 2005 (Senato della Repubblica -Seduta n. 761), the Ministry of Interior confirmed that it was CPTA with its main functions being to provide initial assistance and act as a clearing station (cf Lampedusa – above).

**11. Ragusa (Sicilia): ex-Somicem AGIP, via Colajanni**

**12. Roma (Lazio): Ponte Galeria**

**13. San Foca (Puglia): Regina Pacis, Melendugno, Lecce**  
Reportedly ceased functioning as a CPTA in December 2004.

**14. Torino (Piemonte): corso Brunelleschi**

**15. Trapani (Sicily): Opera Pia Serraino Vulpitta**

**Unconfirmed**

There have been unconfirmed reports of the existence of a small CPTA housing some 50 people in **Naples (Campania)**

**In final stages of preparation in the first months of 2005**

**Bari-Palese (Puglia)**

**Foggia – Borgo Tressanti (more commonly known as Borgo Mezzanone), (Puglia)**

**Gorizia – Gradisca d'Isonzo**

**Unconfirmed**

There have been unconfirmed reports of a CPTA in preparation in **Perugia (Umbria)**

### **Planned**

**Trapani-Milo (Sicily)**

**Lampedusa (Sicily)** (to replace current Lampedusa centre listed above).

### **IDENTIFICATION (formerly reception or first assistance) CENTRES**

**\* Centres listed as Identification Centres in the Italian Government’s fourth periodic report on its implementation of the UN Convention against Torture, dated April 2004.**

**\*\* Centres indicated in the Italian Government’s fourth periodic report on its implementation of the UN Convention against Torture, dated April 2004 as being facilities flanking the CPTAs set up on a case-by case basis as required”:**

**Other centres listed below appear as ‘reception’ centres on official lists of centres existing in 2004: their current precise status is unknown to Amnesty International it appears likely that a number will become identification centres.**

- 1. Bari – Palese, Puglia \***
- 2. Crotone - Sant’ Anna (Calabria)\***
- 3. Foggia – Orta Nova (sometimes referred to as Borgo Tressanti and more commonly known as Borgo Mezzanone), Puglia\***
- 4. Lecce – Otranto, Sicilia**
- 5. Lecce – Loc. La Badessa L’orizzonte, Puglia\***
- 6. Ancona – Benincasa, Le Marche \*\***
- 7. Caltanissetta – Pian del Lago, Sicilia \***
- 8. Como – Comune di Como, Lombardia \*\***
- 9. Trapani – Salinagrande (Sicilia) \***
- 10. Gorizia – ex scuola S. Giuseppe (Friuli-Venezia Giulia) \*\***
- 11. Trapani-Pantelleria – Caserma Barone (Sicilia)\***

### **Planned identification centre**

**Siracusa – Contrada Pantelleria (Sicilia)**

**CENTRES REPORTEDLY DESTINED TO OPERATE AS  
MULTIFUNCTIONAL CENTRES IN IMMEDIATE OR NEAR FUTURE**

**Gorizia – Gradisca d’Isonzo (Friuli-Venezia Giulia)**

**Milan – via Corelli (Lombardia)**

**Rome – Ponte Galleria (Lazio)**

**Foggia- Orta Nova/Borgo Tressanti/Borgo Mezzanone (Puglia)**

**Crotone – Sant’ Anna (Calabria)**

## **APPENDIX 3: Guidelines on all stages of the ‘forced return’ process, adopted by the Committee of Ministers of the Council of Europe on 9 May 2005**

### **[CM (2005) 40]**

#### **Twenty guidelines on forced return<sup>1</sup>**

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The Committee of Ministers,

Recalling that, in accordance with Article 1 of the European Convention on Human Rights, member states shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention;

Recalling that everyone shall have the right to freedom of movement in accordance with Article 2 of Protocol No. 4 to the Convention;

Recalling that member states have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens on their territory;

Considering that, in exercising this right, member states may find it necessary to forcibly return illegal residents within their territory;

Concerned about the risk of violations of fundamental rights and freedoms which may arise in the context of forced return;

Believing that guidelines not only bringing together the Council of Europe's standards and guiding principles applicable in this context, but also identifying best possible practices, could serve as a practical tool for use by both governments in the drafting of national laws and regulations on the subject and all those directly or indirectly involved in forced return operations;

Recalling that every person seeking international protection has the right for his or her application to be treated in a fair procedure in line with international law, which includes access to an effective remedy before a decision on the removal order is issued or is executed,

1. Adopts the attached guidelines and invites member states to ensure that they are widely disseminated amongst the national authorities responsible for the return of aliens.

2. Considers that in applying or referring to those guidelines the following elements must receive due consideration:

*a.* none of the guidelines imply any new obligations for Council of Europe member states. When the guidelines make use of the verb “shall” this indicates only that the obligatory character of the norms corresponds to already existing obligations of member states. In certain cases however, the guidelines go beyond the simple reiteration of existing binding norms. This is indicated by the use of the verb “should” to indicate where the guidelines constitute recommendations addressed to the member states. The guidelines also identify certain good practices, which appear to represent innovative and promising ways to reconcile a return policy with full respect for human rights. States are then “encouraged” to seek inspiration from these practices, which have been considered by the Committee of Ministers to be desirable;

*b.* nothing in the guidelines shall affect any provisions in national or international law which are more conducive to the protection of human rights. In particular, in so far as these guidelines refer to rights which are contained in the European Convention on Human Rights, their interpretation must comply with the case-law of the European Court of Human Rights;

*c.* the guidelines are without prejudice to member states' reservations to international instruments.

## **Chapter I – Voluntary return**

### **Guideline 1. Promotion of voluntary return**

The host state should take measures to promote voluntary returns, which should be preferred to forced returns. It should regularly evaluate and improve, if necessary, the programmes which it has implemented to that effect.

## **Chapter II – The removal order**

### **Guideline 2. Adoption of the removal order**

Removal orders shall only be issued in pursuance of a decision reached in accordance with the law.

1. A removal order shall only be issued where the authorities of the host state have considered all relevant information that is readily available to them, and are satisfied, as far as can reasonably be expected, that compliance with, or enforcement of, the order, will not expose the person facing return to:

*a.* a real risk of being executed, or exposed to torture or inhuman or degrading treatment or punishment;

*b.* a real risk of being killed or subjected to inhuman or degrading treatment by non-state actors, if the authorities of the state of return, parties or organisations controlling the state or a substantial part of the territory of the state, including international organisations, are unable or unwilling to provide appropriate and effective protection; or

*c.* other situations which would, under international law or national legislation, justify the granting of international protection.

2. The removal order shall only be issued after the authorities of the host state, having considered all relevant information readily available to them, are satisfied that the possible interference with the returnee's right to respect for family and/or private life is, in particular, proportionate and in pursuance of a legitimate aim.

3. If the state of return is not the state of origin, the removal order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected, that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk mentioned in paragraph 1, sub-paragraph *a.* and *b.* or other situations mentioned in paragraph 1, sub-paragraph *c.*

4. In making the above assessment with regard to the situation in the country of return, the authorities of the host state should consult available sources of information, including non-governmental sources of information, and they should consider any information provided by the United Nations High Commissioner for Refugees (UNHCR).

5. Before deciding to issue a removal order in respect of a separated child, assistance – in particular legal assistance – should be granted with due consideration given to the best interest of the child. Before removing such a child from its territory, the authorities of the host state should be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

6. The removal order should not be enforced if the authorities of the host state have determined that the state of return will refuse to readmit the returnee. If the returnee is not readmitted to the state of return, the host state should take him/her back.

### **Guideline 3. Prohibition of collective expulsion**

A removal order shall only be issued on the basis of a reasonable and objective examination of the particular case of each individual person concerned, and it shall take into account the circumstances specific to each case. The collective expulsion of aliens is prohibited.

### **Guideline 4. Notification of the removal order**

1. The removal order should be addressed in writing to the individual concerned either directly or through his/her authorised representative. If necessary, the addressee should be provided with an explanation of the order in a language he/she understands. The removal order shall indicate:

- the legal and factual grounds on which it is based;
- the remedies available, whether or not they have a suspensive effect, and the deadlines within which such remedies can be exercised.

2. Moreover, the authorities of the host state are encouraged to indicate:

- the bodies from whom further information may be obtained concerning the execution of the removal order;
- the consequences of non-compliance with the removal order.

### **Guideline 5. Remedy against the removal order**

1. In the removal order, or in the process leading to the removal order, the subject of the removal order shall be afforded an effective remedy before a competent authority or body composed of members who are impartial and who enjoy safeguards of independence. The competent authority or body shall have the power to review the removal order, including the possibility of temporarily suspending its execution.

2. The remedy shall offer the required procedural guarantees and present the following characteristics:



- the time-limits for exercising the remedy shall not be unreasonably short;
  - the remedy shall be accessible, which implies in particular that, where the subject of the removal order does not have sufficient means to pay for necessary legal assistance, he/she should be given it free of charge, in accordance with the relevant national rules regarding legal aid;
  - where the returnee claims that the removal will result in a violation of his or her human rights as set out in guideline 2.1, the remedy shall provide rigorous scrutiny of such a claim.
3. The exercise of the remedy should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights as set out in guideline 2.1.

### **Chapter III – Detention pending removal**

#### **Guideline 6. Conditions under which detention may be ordered**

1. A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems.
2. The person detained shall be informed promptly, in a language which he/she understands, of the legal and factual reasons for his/her detention, and the possible remedies; he/she should be given the immediate possibility of contacting a lawyer, a doctor, and a person of his/her own choice to inform that person about his/her situation.

#### **Guideline 7. Obligation to release where the removal arrangements are halted**

Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.

#### **Guideline 8. Length of detention**

1. Any detention pending removal shall be for as short a period as possible.

2. In every case, the need to detain an individual shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, such reviews should be subject to the supervision of a judicial authority.

**Guideline 9. Judicial remedy against detention**

1. A person arrested and/or detained for the purposes of ensuring his/her removal from the national territory shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and, subject to any appeal, he/she shall be released immediately if the detention is not lawful.

2. This remedy shall be readily accessible and effective and legal aid should be provided for in accordance with national legislation.

**Guideline 10. Conditions of detention pending removal**

1. Persons detained pending removal should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

2. Such facilities should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. In addition, care should be taken in the design and layout of the premises to avoid, as far as possible, any impression of a “carceral” environment. Organised activities should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation.

3. Staff in such facilities should be carefully selected and receive appropriate training. Member states are encouraged to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. Preferably, some of the staff should have relevant language skills and should be able to recognise possible symptoms of stress reactions displayed by detained persons and take appropriate action. When necessary, staff should also be able to draw on outside support, in particular medical and social support.

4. Persons detained pending their removal from the territory should not normally be held together with ordinary prisoners, whether convicted or on remand. Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.

5. National authorities should ensure that the persons detained in these facilities have access to lawyers, doctors, non-governmental organisations, members of their families, and the UNHCR, and that they are able to communicate with the outside world, in accordance with the relevant national regulations. Moreover, the functioning of these facilities should be regularly monitored, including by recognised independent monitors.

6. Detainees shall have the right to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.

7. Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations. This information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter. Detainees should be informed of their entitlement to contact a lawyer of their choice, the competent diplomatic representation of their country, international organisations such as the UNHCR and the International Organization for Migration (IOM), and non-governmental organisations. Assistance should be provided in this regard.

#### **Guideline 11. Children and families**

1. Children shall only be detained as a measure of last resort and for the shortest appropriate period of time.

2. Families detained pending removal should be provided with separate accommodation guaranteeing adequate privacy.

3. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay.

4. Separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.

5. The best interest of the child shall be a primary consideration in the context of the detention of children pending removal.

#### **Chapter IV – Readmission**

### **Guideline 12. Cooperation between states**

1. The host state and the state of return shall cooperate in order to facilitate the return of foreigners who are found to be staying illegally in the host state.
2. In carrying out such cooperation, the host state and the state of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned. The state of origin is under the same obligation where its authorities are contacted with a view to establishing the identity, the nationality or place of residence of the returnee.
3. The restrictions imposed on the processing of such personal data are without prejudice to any exchange of information which may take place in the context of judicial or police cooperation, where the necessary safeguards are provided.
4. The host state shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host state should not share information relating to the asylum application.

### **Guideline 13. States' obligations**

1. The state of origin shall respect its obligation under international law to readmit its own nationals without formalities, delays or obstacles, and cooperate with the host state in determining the nationality of the returnee in order to permit his/her return. The same obligation is imposed on states of return where they are bound by a readmission agreement and are, in application thereof, requested to readmit persons illegally residing on the territory of the host (requesting) state.
2. When requested by the host state to deliver documents to facilitate return, the authorities of the state of origin or of the state of return should not enquire about the reasons for the return or the circumstances which led the authorities of the host state to make such a request and should not require the consent of the returnee to return to the state of origin.
3. The state of origin or the state of return should take into account the principle of family unity, in particular in relation to the admission of family members of the returnees not possessing its nationality.
4. The state of origin or the state of return shall refrain from applying any sanctions against returnees:

- on account of their having filed asylum applications or sought other forms of protection in another country;
- on account of their having committed offences in another country for which they have been finally convicted or acquitted in accordance with the law and penal procedure of each country; or
- on account of their having illegally entered into, or remained in, the host state.

#### **Guideline 14. Statelessness**

The state of origin shall not arbitrarily deprive the person concerned of its nationality, in particular where this would lead to a situation of statelessness. Nor shall the state of origin permit the renunciation of nationality when this may lead, for the person possessing this state's nationality, to a situation of statelessness which could then be used to prevent his or her return.

#### **Chapter V – Forced removals**

#### **Guideline 15. Cooperation with returnees**

1. In order to limit the use of force, host states should seek the cooperation of returnees at all stages of the removal process to comply with their obligations to leave the country.
2. In particular, where the returnee is detained pending his/her removal, he/she should as far as possible be given information in advance about the removal arrangements and the information given to the authorities of the state of return. He/she should be given an opportunity to prepare that return, in particular by making the necessary contacts both in the host state and in the state of return, and if necessary, to retrieve his/her personal belongings which will facilitate his/her return in dignity.

#### **Guideline 16. Fitness for travel and medical examination**

1. Persons shall not be removed as long as they are medically unfit to travel.
2. Member states are encouraged to perform a medical examination prior to removal on all returnees either where they have a known medical disposition or where medical treatment is required, or where the use of restraint techniques is foreseen.
3. A medical examination should be offered to persons who have been the subject of a removal operation which has been interrupted due to their resistance in cases where force had to be used by the escorts.

4. Host states are encouraged to have "fit-to-fly" declarations issued in cases of removal by air.

#### **Guideline 17. Dignity and safety**

While respecting the dignity of the returnee, the safety of the other passengers, of the crew members and of the returnee himself/herself shall be paramount in the removal process. The removal of a returnee may have to be interrupted where its continuation would endanger this.

#### **Guideline 18. Use of escorts**

1. The authorities of the host state are responsible for the actions of escorts acting on their instruction, whether these people are state employees or employed by a private contractor.
2. Escort staff should be carefully selected and receive adequate training, including in the proper use of restraint techniques. The escort should be given adequate information about the returnee to enable the removal to be conducted safely, and should be able to communicate with the returnee. Member states are encouraged to ensure that at least one escort should be of the same sex as that of the returnee.
3. Contact should be established between the members of the escort and the returnee before the removal.
4. The members of the escort should be identifiable; the wearing of hoods or masks should be prohibited. Upon request, they should identify themselves in one way or another to the returnee.

#### **Guideline 19. Means of restraint**

1. The only forms of restraint which are acceptable are those constituting responses that are strictly proportionate responses to the actual or reasonably anticipated resistance of the returnee with a view to controlling him/her.
2. Restraint techniques and coercive measures likely to obstruct the airways partially or wholly, or forcing the returnee into positions where he/she risks asphyxia, shall not be used.

3. Members of the escort team should have training which defines the means of restraint which may be used, and in which circumstances; the members of the escort should be informed of the risks linked to the use of each technique, as part of their specialised training. If training is not offered, as a minimum regulations or guidelines should define the means of restraint, the circumstances under which they may be used, and the risks linked to their use.

4. Medication shall only be administered to persons during their removal on the basis of a medical decision taken in respect of each particular case.

### **Guideline 20. Monitoring and remedies**

1. Member states should implement an effective system for monitoring forced returns.
2. Suitable monitoring devices should also be considered where necessary.
3. The forced return operation should be fully documented, in particular with respect to any significant incidents that occur or any means of restraint used in the course of the operation. Special attention shall be given to the protection of medical data.
4. If the returnee lodges a complaint against any alleged ill-treatment that took place during the operation, it should lead to an effective and independent investigation within a reasonable time.

### **Appendix**

#### **Definitions**

For the purpose of these guidelines, the following definitions apply:

- State of origin: the state of which the returnee is a national, or where he/she permanently resided legally before entering the host state;
- State of return: the state to which a person is returned;
- Host state: the state where a non-national of that state has arrived, and/or has sojourned or resided either legally or illegally, before being served with a removal order;
- Illegal resident: a person who does not fulfil, or no longer fulfils, the conditions for entry, presence in, or residence on the territory of the host state;

- Returnee: any non-national who is subject to a removal order or is willing to return voluntarily;
- Return: the process of going back to one's state of origin, transit or other third state, including preparation and implementation. The return may be voluntary or enforced;
- Voluntary return: the assisted or independent departure to the state of origin, transit or another third state based on the will of the returnee;
- Assisted voluntary return: the return of a non-national with the assistance of the International Organization for Migration (IOM) or other organisations officially entrusted with this mission;
- Supervised voluntary return: any return which is executed under direct supervision and control of the national authorities of the host state, with the consent of the returnee and therefore without coercive measures;
- Forced return: the compulsory return to the state of origin, transit or other third state, on the basis of an administrative or judicial act;
- Removal: act of enforcement of the removal order, which means the physical transfer out of the host country;
- Removal order: administrative or judicial decision providing the legal basis of the removal;
- Readmission: act by a state accepting the re-entry of an individual (own nationals, third country nationals or stateless persons), who has been found illegally entering, being present in or residing in another state;
- Readmission agreement: agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not or no longer fulfil the conditions of entry to, presence in or residence in the requesting state;
- Separated children: children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives.

**Note <sup>1</sup> When adopting this decision, the Permanent Representative of the United Kingdom indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with Guidelines 2, 4, 6, 7, 8, 11 and 16.**