

Report

International Fact-finding Mission

ITALY

Right of Asylum in Italy: Access to procedures and treatment of asylum-seekers

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Introduction

Italy's geographical position makes the country one of the principal maritime entry points into the European Union for migrants and asylum-seekers from more and more distant countries. In recent years this situation has led Italian authorities to take initiatives regarding the administration of its borders and the treatment of asylum-seekers which, coupled with a complex and unstable legal mechanism, does not always meet the requirements to respect Human Rights of the person. This tendency is in line with the more general direction adopted by the European Union since the end of the 90s in the domain of the fight against illegal immigration. This is reflected in the strengthening of controls at the external borders of the EU, particularly the maritime borders, and the methods of removing unwanted foreigners (joint flights). It is also reflected in the restrictions on candidates' access to asylum in Europe, in the development of partnerships with countries of origin and, above all, transit, to encourage them to work in close collaboration with the European migration policy, particularly in preventing migrants and asylum-seekers from continuing their journey to the EU. The Mediterranean rim is naturally one of the areas of predilection for this policy, which Italy is experimenting with its North African neighbours, often with detrimental consequences on the migrants and those in exile who are its focus.

During 2004, several events illustrated in a spectacular manner the strong-arm methods chosen by Italy to manage the arrival of migrants on its coast by organising massive and almost immediate refoulement at the time when the country was labouring to adopt a coherent legislative mechanism with respect to asylum. Although Italy has been able to introduce a dignified system of reception for asylum-seekers in the context of a national reception programme, it is a long way far from satisfying needs and leaves many applicants by the wayside. Instead of trying to make it generally applicable, the reform of asylum legislation under way since 2002, which should come into force during 2005, is based on accelerating procedures and the creation of "identification centres" in which many applicants risk confinement by way of initial reception. Italy's experience with respect to detention centres for foreigners - the CPTAs, in existence since 1998 - is not particularly convincing, and there are many criticisms of the ways in which their "guests" are treated. However, although the efficiency of detention with respect to the aims declared (improving the expulsion rate) has not been proven, the legislator recently doubled the maximum detention period in CPTAs.

This is the context of the FIDH mission to Italy, undertaken from December 5 to 15, 2004. It followed on the visit of the United Nations Special Rapporteur on Immigrant Workers in June 2004¹, and that of a delegation of the Council of Europe's European Committee for the Prevention of Torture in November 2004². The intention behind the mission was not to consider Italy's complete immigration policy, nor to consider in detail physical conditions in the detention centres for foreigners. In add to the study it made of Italian law with regard to the reception of immigrants, asylum and the removal of foreigners, the mission investigated the concrete conditions of treatment of asylum-seekers and migrants in an irregular situation. This investigation included:

- visits to four CPTA (temporary stay and assistance centres), and one CDA (centre of first reception),
- visits to several association reception centres for asylum-seekers,
- a visit to the "Hotel Africa Tiburtina", considered to be one of the largest squats in the capital, located on the outskirts of Rome, and where many asylum-seekers gather,
- meetings with many associations and individuals involved in the defence of migrants and asylum-seekers (see appendix list), and a representative of the Italian delegation of the United Nations High Commission for Refugees (UNHCR),
- meetings with officials of the Ministries of the Interior and Foreign Affairs.

The mission also pieced together, from information received, the sequence of three events that marked 2004: the Cap Anamur affair in July, the massive expulsions organised in October from the island of Lampedusa to Libya and, in the same month, the expulsion of thirteen Kurdish stowaways on the cargo ship *Lydia Oldendorff*, who were prevented from lodging applications for asylum on their arrival in Italy. These events are an illustration on the one hand of Italy's attempt to take a firm stance in the European debate on immigration, and on the other hand the contradictions between its internal legislation, its international commitments, and the practices of its politicians.

1. Report of the United Nations Special Rapporteur on Migrant Workers - visit to Italy, E/CN.4/2005/Add.3, 15 November 2004.

2. Council of Europe Committee for the Prevention of Torture visits Italy, press release, 9 December 2004.

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I - ITALY AND FOREIGNERS

Italy, together with Spain and Greece, is one of the European Union countries in which immigration is a recent phenomenon. A country with a high level of emigration for over a century, Italy saw its migratory flow reversed to turn into immigration only at the end of the 1970s. This explains in part why there is no tradition of immigration and asylum, and why legislation and procedures in this domain are still so incoherent.

Over the past thirty years the birth rate in Italy has fallen to the extent that the renewal of generations is not assured and there is a risk that the population will decrease considerably in the coming decades. Faced with this time-line, many experts speak of immigration as a demographic and economic necessity. However, as in most European countries, a considerable section of public opinion and the political establishment is resolutely opposed to too great an increase in the migratory flow. Thus we are confronted by the following paradox: since the beginning of the 1990s successive Italian governments have, with greater or lesser determination, undertaken to make the conditions of entry to and residence within the territory stricter, at the same time regularly carrying out massive campaigns to regularise immigrants without papers. The most recent took place in 2003 and concerned 705,403 people, 90% of applications. For several years Italy has also operated out a quota policy according to nationality and skills, in negotiation with the countries of origin.

1. The immigrant population

According to Ministry of the Interior statistics, at the 31st of December 2003 Italy counted 2,193,999 regular immigrants. These included 6,768 who obtained asylum, of whom 228 were re-admitted under the Dublin Convention; 10,550 asylum-seekers; and 3,936 who were granted residency for humanitarian reasons. At the end of 2003, the number of irregular foreigners was estimated to be 105,957 (as against 150,746 estimated in 2002). Again in 2003, 65,000 foreigners were removed, including 24,202 who were accompanied to the border, 3,195 expelled by the *Questura*, 18,844 expelled and accompanied to the border, and 9,901 re-admitted to the country of origin in accordance with specific agreements.

At the end of 2003, regular immigrants represented around 4.2% of the Italian population. Nationalities with the greatest representation amongst the immigrants are Moroccan with 11.4% of the total, Albanian (11.2%), Romanian, Filipino and Chinese. In 2002-2003, non-community Europeans represented 32.3% of arrivals, Africans 26.5%, Asians 18.5%, and Central and Southern Americans 11.8%. 58.7% of foreigners are concentrated in the North of the country. It is therefore estimated that the number of refugees is less than 1% of the foreign population regularly resident in Italy.

The integration of regular immigrants is far from being an established fact. An example is the high proportion of foreigners in the prison population (30.1% of the total, that is 16,788 out of 55,670). Moroccans represent 21.7% of foreign detainees. The countries of the Maghreb all together account for 43.6%. East Europeans make up 33.6% of the prison population. Crimes that are the most frequent reason for detention are those relating to prostitution (30%) and drugs (13%). In addition to these are crimes linked to legislation on foreigners' residence: the use of fake identity documents, and now a continued irregular situation on Italian territory. The high proportion of foreigners amongst detainees almost automatically raises the numbers of those who are irregular residents, in that any foreigner who is liable to be expelled on leaving prison remains in Italy without papers unless he is actually removed.

If the migratory flows leading to a high population of irregular residents remain significant despite the toughening of legislation, this is because, on the one hand, clandestine labour is common in Italy in every economic sector, especially agriculture. According to many experts, Italian agriculture would suffer of a lack of labour force and would lose a large part of its competitive edge if it did not employ foreigners in situations of illegal residency or without the right to work. In certain highly agricultural regions such as Sicily, the latter are practically certain of finding work and nearly all Sicilian greenhouses almost exclusively employ foreigners without work permits, including asylum-seekers. During the massive regularisation campaigns, many CPTA residents interviewed by the mission, and many association members, pointed out that it is common practice in agriculture and other sectors for workers to pay their employers in order to get a work contract.

2. Asylum seeking in Italy

The statistics available do not sufficiently concur and are not precise enough to make a broad evaluation of the evolution of the presence of asylum-seekers in Italy in recent years. An examination of the activities of the Central Commission responsible for considering applications (see table) shows however that the number of asylum applications made to this body had, from 24,800 in 1999, fallen by more than half in 2001 and then risen slightly in 2003 (11,323). This figure puts Italy in nineteenth place out of the twenty-five EU member States, regarding the percentage of applications for asylum per number of inhabitants³, putting in perspective the arguments that are often used to justify the need to reform the asylum procedure in order to cope with what is described as excessive pressure.

The statistics relating to the “examined” asylum applications do not take into account a phenomenon that is difficult to quantify relating to application of the so-called “Dublin” regulation⁴, which places responsibility for examining an asylum application lodged in one EU member state on the

country which is the first point of entry into the Community. Due to its geographical position, Italy is in fact on occasion simply an inevitable transit country for foreigners seeking protection who prefer to go to another EU country. Whereas some, after trying to lodge an application elsewhere, are obliged by the Dublin regulation to return to Italy, a doubtless considerable number, after crossing the Italian border, decide to travel across the country avoiding identification procedures in order to escape the Dublin mechanism. It is remarked at the Ministry of the Interior that the Dublin system is very hard on Italy, which generally agrees to “take back” asylum-seekers at the request of other member states, but which does not in general make the reverse request in order to send a foreigner back to the proven transit country before reaching Italy. Although it was impossible for us to obtain an estimated figure concerning the effect of the application of the Dublin regulation on the volume of asylum requests, the Italian authorities clearly consider this phenomenon to be significant and that the Dublin regulation should be re-considered so that there is a more balanced spread of asylum-seekers in the European Union.

Activities of the Central Commission for the Recognition of Refugee Status, 1999-2003

Year	1999	2000	2001	2002	2003
Registered asylum seekers	24 800	17 776	10 889	7 281	11 323
Accepted	802	1 643	2 103	1 270	726
Rejected	7 443	22 649	11 130	15 755	10 491
Not examined	19	103	76		83
Total applications examined	8 266	24 415	13 309	17 193	11 217

Source: report of the Court of Auditors, December 2004

3. Official and associational management of immigration and asylum

Supervisory bodies: immigration management is handled by two departments of the Ministry of the Interior: the recently created (three years ago) Department of Civil Liberties, Immigration and Asylum, to which 16 prefects are nominated, and the Department of Public Security which has total control over removal proceedings. The Ministry of Foreign Affairs (the central administrative body for Italians abroad and for immigration) is also involved through its diplomatic relationships with the countries of origin and the signature of re-admission agreements. With regard to asylum, this central administrative body is competent to make reports together with the United Nation High Commission for Refugees

(UNHCR), through its mission in Geneva. However the Ministry of the Interior handles operational relations with the Rome delegation of UNHCR. The Ministry of Foreign Affairs is also represented by one or several officials on the Central Commission (National Commission in 2005), for examining requests for asylum.

Associations: there are many non-governmental actors involved in the issues of migration and asylum. With respect to the United Nations, it is in Italy that the UNHCR has, since the beginning of the 1990s, carried out the largest aid programme in Europe (Italy is also the country that has the greatest number of private financial contributors to UNHCR). This is the period during which Italy, having removed the geographical reservation that until then restricted application

3. UNHCR, *Asylum level and trends in industrialised countries*, 2004

4. EC Regulation n°343/2003 of 18th February 2003

of the Geneva Refugee Convention solely to persons of European origin (see below), saw the arrival of a substantial increased number of asylum-seekers. At the same time and for the same reasons the CIR (Italian Council for Refugees) was founded, a collective of organisations⁵ with an annual budget of around 2 million euros, essentially supplied from public funding (European Commission, the UN Voluntary Fund for the Victims of Torture, the Italian State). The basic activities of the CIR consist of practical and legal assistance projects for refugees. In parallel the Italian Section of Amnesty International opened up a refugee section. Médecins Sans Frontières Italy has for several years carried out a considerable programme of assistance to asylum-seekers and monitoring of detention centres. The report on CPTA published by the organisation in January 2003 caused it to be denied access to such centres, unless those in detention specifically ask to see its employees or volunteers.

The Federation of Evangelical Churches, Caritas, the San Egidio Community and the Jesuit Refugee Service are amongst the many denominational associations committed to providing assistance to migrants and asylum-seekers. The unions have also been involved for several years. The great number of local groups, whether at town or district level, should be added to the range of associations that actively provide assistance to those without papers and to asylum-seekers. Since 2002, the NGOs intervene more and more in the legal domain as the laws on immigration and asylum arrangements become stricter, and networks of solicitors and lawyers have become involved in the defence of foreigners.

4. The hardening of Italian immigration policy

Italy has only had specific immigration legislation since 1990. The law known as “Martelli”, which was modified in 1998, also provides for access to the territory for asylum-seekers (see below - The legal context of asylum). It was profoundly reformed in 2002 with the “Bossi-Fini” law of the 30th of July 2002. The new mechanism, certain elements of which had still not come into force by the end of 2004, is characterised by a clear hardening of position: the introduction of the offence of “irregular presence”; the reinforcing of expulsion methods; the increase in the time foreigners are held in detention centres (CPTA, see below); forbidding expelled foreigners access to the territory for 10 years; the creation of detention centres for asylum-seekers (CDI, see below). In certain respects there are gaps in the mechanism, or it is contradictory, since it has been implemented through rulings and circulars which sometimes lack coherence and which are superimposed one on another. As is often the case, such a hardening of position results in the “manufacture” of illegal residents, whose stay within a territory is made easier by the combination of a relatively disorganised administration and considerable tolerance for undeclared work.

The Italian context is also characterised by the size of its maritime borders, which has caused the authorities to set up, both internally and externally, operational mechanisms to dissuade potential irregular migrants. Their compatibility with international regulations on basic rights is sometimes questionable. This tendency may explain the increase in incidents over the past two years, which will be illustrated by three cases that occurred in 2004.

5. NGO members of the CIR: ACLI, ARCI, AWR, Caritas Italiana, CGIL and CISL (the two main Italian unions), the San Egidio Community, the Federation of Evangelical Churches, Fondation Franco verga, the Migrants Foundation (CEI), UIL, UFTDU

6. MSF Italy: *Rapporto su i centri di permanenza temporanea e assistenza*, January 2004

II - THE LEGAL FRAMEWORK FOR ASYLUM

No specific legal mechanism for asylum exists in Italy. An organic draft law, which had been under discussion since 2002 and should have put an end to this situation, atypical within the European Union, was withdrawn from the parliamentary calendar in December 2004 due to the lack of consensus agreement between its promoters. Yet Italy has been party to the 1951 Geneva Refugee Convention since 1954, even though it was only in 1990 that it lifted the geographical reservation that restricted the granting of refugee status solely to persons of European origin. In addition to the Geneva Convention⁷, the right to asylum in Italy is based on Article 14 of the 1948⁸ Universal Declaration of Human Rights and Article 10.3 of the Italian Constitution⁹. In the absence of an organic law on asylum, points dealing with asylum have been included in legal texts and rulings that deal with immigration.

The asylum procedure has been organised only since 1990, through Article 1 of law 39/90, known as the “Martelli law”. The latter, partially modified by law 40/98 known as the “Turco-Napolitano law” of 1998, was included as part of law 189/02 known as the “Bossi-Fini law” of 2002. This was the text in force at the time of the mission, complemented by implementation decrees, in particular the presidential decree of the 15th of May 1990, and several expected decrees on implementation of the 2002 reform which, although they were known and sometimes applied in advance, had still not been adopted more than two years after promulgation of the law. The basic mechanism established by this reform should come into operation however during 2005, on the basis of the entry into force of the presidential decree of 16 September 2004, published in the *Gazzetta Ufficiale* of December 2004, the 22nd, coming into effect.

Several factors contribute to the relative confusion that reigns with respect to the law that is applicable to asylum-seekers in Italy: on one hand, the superposition of the 10 year old mechanism currently in force and the early putting into in practice of certain measures provided for in the 2002 reform that has not formally been put into effect; on the other hand, the debates on what was to be the future organic law, that was deferred in the end; and finally, the effect of legislation on

the expulsion and refoulement of foreigners on the situation of asylum-seekers. The hybrid status of certain centres where foreigners are placed (see below) is typical of this “category mixing”.

The need to take into account Community constraints will shortly be added to this combination of factors. Italy, together with its EU partners, is required to adapt the terms of the European directives adopted during the period 2001-2004 in the context of harmonisation of asylum policy. This relates in particular to the procedural regulations for handling applications and the conditions of reception of asylum-seekers (see below).

1. Asylum procedure up to the Bossi-Fini law

Taking into consideration the fact that the mission took place during a period of transition, the procedure described here is that which was essentially still in effect at the end of 2004, but which was due to be replaced during 2005, with the full application of the Bossi-Fini mechanism (see below: Bossi-Fini reform).

According to the terms of the mechanism provided for by the Martelli law, progressively modified by the entry into effect of the texts in application of the Bossi-Fini law, a foreigner seeking asylum in Italy may be recognised as having *refugee status*, with reference to Article 1 of the Geneva Convention, or be granted *humanitarian protection* if danger of a general nature is deemed to exist in his country that prevents him from returning there. The decision is taken by the *Central Commission for the Recognition of Refugee Status*, a body made up of officials from the Ministry of the Interior and Foreign Affairs, together with UNHCR representatives on a consultancy basis. Independently of situations provided for in law, since 1997 the Court of Appeal has also recognised the competence of the ordinary tribunals to examine the advisability of granting “*constitutional*” *asylum* with reference to the Italian Constitution (art. 10.3, see above).

In the context of the *ordinary procedure* (see below) and in the course of the procedure, the asylum-seeker is given a temporary residence document valid for a period of three

7. In the terms of Article 1 of the Geneva Convention, a “refugee” is any person who has the “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...”.

8. “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

9. “Lo straniero, al quale sia impedito nel suo paese l’effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d’asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge.”

months renewable up to the decision of the Commission, receives a daily allocation of 17 euros for 45 days, and in certain cases may be granted benefits including lodging under a national reception programme (see below). He or she is forbidden to undertake paid employment.

If the request is rejected, the asylum-seeker receives an expulsion order requiring him to quit Italy within 15 days, unless it is accompanied by a judgement for immediate execution of the order. It is nevertheless possible to appeal, which is not suspensive unless specifically requested. In reality at the end of 2004 it was rare that steps for removal were forcibly taken. On the other hand, the law now makes it an offence, punishable by a prison sentence of six months to one year, to remain on the territory beyond a four months period following notification of the expulsion order.

Data supplied by the Central Commission (see table below) does not, at first reading, show the rate of positive responses given in relation to the number of asylum applications lodged in any year. In fact, the delay that has built-up in the examination of applications has led to a gap that can be of more than a year between the date of reply and the date when the application was sent to the Commission. According to the NGOs that are regularly involved in asylum and refugee issues, the annual rejection rate is around 90%. From this they conclude that a great many of those for whom nonsuit is pronounced, who

cannot envisage returning to their country of origin and who are not actually removed, are forced to go underground in Italy or to make their way illegally to other European countries¹⁰ (running the risk of refoulement in application of the Dublin ruling).

If the Commission response is favourable, the asylum-seeker receives a refugee certificate or a residence permit on humanitarian grounds, depending on the situation. Central Commission figures do not permit the calculation of the ratio of refugee status and permits granted under the heading of humanitarian protection in relation to the total number of successful applications.

2. Failings of the reception mechanism

The reception mechanism for asylum-seekers is subject to much criticism. It is criticised for its slowness - asylum-seekers wait for between 12 and 24 months for a response from the Central Commission - and the effects this has on the situation of applicants. Apart from the small proportion of those who are lucky enough to find lodgings under the National Reception Plan (PNA, see below), estimated by the associations to be under 10%¹¹, most are left to their own devices and without resources once the 45 days during which they receive an allocation have expired. They have no access to health care and no opportunity to provide for themselves.

The PNA and the SPRAR - The national programme for the reception of asylum-seekers and refugees (*Programma Nazionale Asilo*, PNA) was set up in 2001 as an initiative of the Ministry of the Interior, UNHCR and the ANCI (*Associazione Nazionale dei Comuni Italiani*) with co-funding from the ERF (European Refugee Fund). It involves many NGOs at national and local level and consists of a decentralised programme for providing lodging on a human scale, often in apartments, accompanied, in the case of asylum-seekers, by legal assistance with the asylum procedure, and social assistance. After three years in operation the PNA was replaced in 2004 by a new programme, the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*), with increased funding. The ANCI (association of communes) now has the legal power to manage the funds, to which are added the “8/1000” (a tax debited from income tax). In total, around 90 municipalities are involved with the SPRAR, with a total of 2,250 places.

The quality of reception conditions organised in the context of the PNA shows up glaring disparities in the treatment of asylum-seekers. As we have seen, the plan and its 1,500 beds only cover a tiny fraction of what is needed. Apart from the fact that the budget allocated to the PNA is notoriously insufficient, it is allocated very unequally throughout the Italian territory, favouring some areas to the detriment of the south in particular, especially Sicily which, however, receives a great number of asylum-seekers. The failings of the mechanism are certainly made up for by a great many reception solutions of a charitable nature, providing, or not, stable lodging (such as Caritas, the

Jesuit Refugee Service, many local religious missions) or activist lodging (“self-managed” squats, “social centres”), or lodging programmes directly managed or financially assisted by certain municipalities. The mission visited two of these reception centres: the Laboratorio Zeta social centre in Palermo, a city where several structures of this kind exist, and the Hourria de Caltanissetta centre. These centres are generally self-managed by the residents with the help of volunteers, or managed by religious associations, such as the Casa di Gingia in Rome, managed by the JRS (Jesuit Refugee Service). Some of the centres receive aid from the municipalities and/or regions,

10. Comitato per la promozione et protezione dei diritti umani, *NGO shadow report to the fourth periodic report of the Italian government on the implementation of the International Covenant on Economic, Cultural and Social Rights*, October 2004.

11. Idem

generally in the form of the free supply of water, electricity and food. Thus the Hope and Charity Mission in Palermo, which hosts 300 migrants and asylum-seekers, is lodged in a former barracks turned over to it by the public authorities.

But there is a no less significant failure to take on responsibility for asylum-seekers which the various interlocutors of the mission were unable to quantify however. The living conditions of the squat occupants at the disused Tiburtina station in Rome (see below), are a shining example of the failings of the reception system for asylum-seekers, as are the many other improvised lodging sites that exist throughout the Italian territory. In some regions, especially in the South of Italy, applicants who are in the middle of the procedure are forced to work illegally, under exploitative conditions of extreme harshness and vulnerability in order to survive and sometimes in order to feed a family. It must be recalled that in fact they are forbidden to work legally, whatever the length of time the procedure takes. The right to work for asylum-seekers is one of the demands of associations such as those grouped in the CIR, which claim that authorisation to undertake paid work should be granted after three months' presence if, by that time, the applicant has received no reply from the Commission. The Ministry of the Interior, questioned on this matter by the mission, led us to believe that it would not be opposed to granting access to work after six months' wait.

Administrative red tape is added to the poor conditions of reception and the slowness of the procedure. It is very complicated for an asylum-seeker to have his dossier transferred from one region to another, since it can take over six months for changes of address to be registered. The difficulties in receiving the first three weeks' benefits, or even in renewing a temporary residence permit, are so great that some prefer to keep an address going even when it is far away from the place they actually live in, rather than requesting a transfer. Because of this they are forced to make long and expensive journeys in order to carry out simple procedures, sometimes returning from the North of Italy to Sicily, which is for many their first point of arrival in the country.

The disparities in the reception system have a direct effect on access to the procedure. No-one contests the fact that the psychological condition of the asylum-seeker, the stability of his or her daily life, the possibilities of benefiting from social and health care and obtaining legal assistance have a considerable bearing on their chances of receiving a favourable response to their application. Those who are deprived of these advantages have a severe handicap when they come before the Central Commission for the Recognition of Refugee Status. Aside from the practical, everyday

problems they have to deal with, those who are outside the reception mechanism consequently suffer from discrimination in the treatment of their application.

3. The Bossi-Fini reform

If the asylum procedure organised under the Martelli law has been strongly criticised by those who consider that it does not sufficiently guarantee the rights of persons seeking protection in Italy, those responsible for the reform introduced by the Bossi-Fini law in 2002 on the contrary have condemned its laxness, considering that it was frequently misappropriated by foreigners in an irregular situation trying to avoid being removed from the territory. This viewpoint echoes an observation common amongst the member states of the European Union, many of which, in recent times, have toughened their legislation on asylum in the name of dissuasion of "fake refugees". This was the argument put to the mission by Ministry of the Interior officials it met, according to whom the great majority of applications are unfounded, their view corroborated by the fact that many applicants do not appear before the Commission when they are convened to their hearing. Accordingly, the Bossi-Fini reform was presented as the attempt to reconcile the country's need to protect public order with respect for the constitutionally guaranteed rights of asylum-seekers. It is characterised by three important innovations: 1. the detention of asylum-seekers who have entered the Italian territory illegally; 2. acceleration of proceedings through the establishment of a simplified procedure and the creation of decentralised *territorial commissions* for handling applications; and 3. rationalisation of the methods of removing asylum-seekers who have not been granted the right to remain in Italy. This procedure implies that the foreigner should at all times be under the supervision of the administrative authorities, making the detention centres (CPTA and CDI) an essential part of the new mechanism.

4. The CPTAs and the CDIs: indispensable mechanisms

The temporary detention centres (CPTAs), created by the 40/98 "Turco-Napolitano law" of 1998, are for the administrative control of aliens pending their deportation. The Bossi-Fini law of 2002 amended the detention regulations in the CPTAs, in particular by doubling the maximum detention period from 30 to 60 days. This law also sets up identification centres (CDIs) which, in a way, extend the detention regulations to asylum-seekers. Until the end of 2004, however, the CDIs were not officially operating for legislative reasons, although some experimental centres were models for the future system. At the time of the mission there were

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fifteen CPTAs in Italy, varying in size and function¹², and the construction of a new centre in the north of the country was planned. Although the law clearly defined the remit of each of them, in practice it is not always easy to distinguish between them. For example some CPTAs in areas with a huge influx of immigrants operate merely as transit centres, or reception centres (CDAs), where the immigrants are rapidly transferred to other CPTAs, unless they are immediately turned back, as happened in Lampedusa in October 2004. In some cases, as in Caltanissetta (see below) CPTAs and CDAs (later CDIs) are adjacent. The plan to set up decentralised commissions to consider asylum applications in the CDIs (see below) has led to the creation of processing centres for asylum-seekers, which the Minister of the Interior, Giuseppe Pisanu, presents as “multifunctional”¹³ centres where everything can be managed in the same place, from the initial reception to deportation after the investigation of the application and examination of the legal remedies.

The CPTAs

The operation of the CPTAs is regulated by a circular from the Ministry of the Interior dated 30 August 2000, “*Direttiva generale in materia di Centri di Permanenza e di Assistenza ai sensi dell’art. 22, comma i) del DPR 31 agosto 1999*”, which

contains a charter of rights and obligations of detained immigrants. This directive does not in any way ensure consistency in the management and operation of the different centres, so the Ministry of the Interior has attempted to compensate for the differences by enacting on 27 November 2002 the “Guidelines for managing the CPTAs”, as well as a model Convention. Each centre can, moreover, stipulate its own internal regulation. In fact, the regulations in force vary widely amongst the centres. Differences stem from the location of the CPTAs which operate as reception centres, as already noted: the activity of centres situated on or near the coast has a “seasonal” nature, as immigrants cross the Mediterranean mainly during the summer months, in any case, when the weather is good and the wind is favourable. For example, in the summer of 2004, there was more than one boatload per day on the island of Pantelleria, which amounts to about a thousand people per month. This variation is also the rule in Lampedusa. On the other hand, there may not be any boatloads for several weeks. In addition, there are considerable disparities depending on whether or not there are minors, women or families and on the capacity of the centres and in particular on how the CPTA is run by the organisation in charge of it. During its visits in December 2004, the mission was able to record these disparities very clearly.

Regulations in force in the CPTAs

In terms of the “charter of the rights and obligations of detained immigrants”, aliens detained in CPTAs have the following rights:

The right to express themselves in their native tongue or in another familiar language, if necessary with the services of an interpreter;
The right to the respect of family life;
The right to confidentiality in meetings with their lawyer;
The right to visits, and to speak with the diplomatic authorities, family members, ministers of religion;
The right to visits from humanitarian organisations operating within the CPTAs to provide legal, social or psychological assistance;
The right to visits other than those mentioned above on the authority of the local préfecture;
The right to medical assistance;
The right to be advised of the possibility of making an application for asylum;
The right to practise their religion;
The right to use their own mobile telephone or the centre telephones;
The right to correspond;
The right to use communal spaces for recreation or physical exercise.

In terms of the circular of 30 August 2000, they are guaranteed the following services:

Shelter;
Medical assistance and the provision of medicines;
Provision of clothing and “personal hygiene” products;
Laundry facilities;
Communication: every 10 days, they are given a telephone card worth 5 euros, and may post 10 letters and send 3 telegrams of 20 words;
The ability to buy food.

12. The list of centres is in the Appendix.

13. “(E) indispensabile potenziare gli attuali centri di permanenza temporanea e di accoglienza, trasformandoli in nuovi ‘centri polifunzionali’, dedicati allo svolgimento delle attività amministrative e giurisdizionali previste dalla disciplina dell’immigrazione e dell’asilo”, announcement by the Minister of the Interior, G. Pisanu, 20/01/2005.

Until recently, almost all the Italian CPTAs were run by the Italian Red Cross. Since 2002 there has been a diversification based on offers to tender. Now, the centres are run either by charitable NGOs, often of a denominational nature such as the Misericordia association which is directly linked to the Catholic Church, or by social cooperatives, created by a law of 1989. Most of the cooperatives were created by associations of retired police officers (*carabinieri*) or the children of police officers.

Since November 2002, the managing associations and cooperatives must be linked by an agreement with the Ministry of the Interior, the supervisory authority for the CPTAs, the transit and reception centres and now the identification centres. From 2003, all the agreements which had expired were renewed in accordance with the new provisions which simplified the bureaucracy, homogenised the management methods throughout the country and ensured much greater transparency. But the rates paid to the various managers are still too varied as they range from 26 to 100 Euros *per capita*. In its latest report, the Court of Auditors¹⁴ calculated that the average cost per head of daily management, upkeep and renovation of the centres, excluding emergency business, was 71.11 Euros.

It is true that the associations which manage the CPTAs get some financial reward from this. The daily charge for a CPTA is greater than the daily sum allocated to asylum-seekers, (the daily allocation paid for 45 days to asylum-seekers is 17 Euros). It should be noted that a fixed rate is paid to the centre managers, no matter how many “guests”, below a certain threshold of occupants.

According to the Ministry of the Interior, 40% of illegal immigrants held in the centres pending deportation, remain in Italy at the end of the statutory maximum stay of 60 days in the centres, whilst 60% are in fact deported.

The CDIs (identification centres)

In accordance with the decree of 16 September 2004, seven identification centres (CDIs) were created. They are organised and operate solely to receive asylum-seekers. Although the management methods, in the context of agreements with associations or cooperatives, are no different from those in the CPTAs, the regulations stipulate that the reception conditions in the CDIs ensure for the “guests” a quality of life which guarantees the dignity and well-being of the asylum-seekers, by paying particular

attention to families and to the less able; pregnant women, children, the elderly, the sick, and those who have suffered discrimination or abuse in their own country. A legal information service regarding the asylum process must be provided for the “guests”, and the interpreters in the CDIs must be familiar with this procedure. The staff have a duty of discretion with regard to information concerning the asylum-seekers in the centre, as well as those who have left it. Apart from visits from lawyers and UNHCR representatives, those of family members or other acquaintances of the “guests” are authorised at their request by the *prefetto*. Visits by associations whose authority in this sphere has been recognised for at least three months, may also be authorised by the *prefetto* as long as they observe the duty of discretion and the security of the asylum-seekers.

Whilst some “guests” are held in the CDIs, others enjoy “semi-freedom” (see below “Placing asylum-seekers in detention”). The latter are given authorisation to leave the centre, allowing them to leave it between 8 am and 8 pm. Authorisation for longer periods of leave may be granted for personal reasons (health or family related), or for necessary meetings connected with the consideration of the asylum request. However, if they leave the centre without observing the set rules for leave, asylum-seekers will be deemed to have renounced their asylum application.

5. Placing asylum-seekers in detention

The law stipulates that asylum-seekers are not detained in principle for the sole purpose of examining their application. It also stipulates, however, that they may be detained for the period strictly necessary for determining whether they are authorised to stay in the country in the following cases:

- to verify or determine their nationality or identity if they have arrived without identification papers or travel documents or if they have produced false papers;
- to verify the evidence on which their asylum application is founded;
- pending the procedure for entry to the country.

In addition, the law makes it clear that an asylum-seeker must be detained:

- if the application was made after the asylum-seeker had been arrested for entering or illegally attempting to enter the country or if he/she were in breach of the regulations;
- if he/she is under an expulsion or refoulement order.

14. 2003 Report

In the first four cases, asylum-seekers are placed in identification centres (CDIs, see below), a new category of centres created by the Bossi-Fini law. As stated above, if a foreigner leaves an identification centre without authorisation, this is equivalent to renouncing his/her asylum application.

In the last case, asylum-seekers are detained in the CPTAs (see above).

6. An expedited asylum procedure

The *ordinary* procedure described above, which was the only procedure prior to the Bossi-Fini law of 2002, is now reserved only for aliens who have entered the country legally. The rules governing this procedure were modified by the law and restricted by time limits which were not supposed to exceed three weeks. Alongside this, a *simplified* procedure was set up, for aliens seeking asylum after entering Italy in breach of the regulations or while they were already there illegally, or when a deportation order has been served on them. It is shorter, and, in particular, is connected with the systematic detention of asylum-seekers to whom it applies.

The ordinary procedure: within two days of the asylum application is made, the application is being forwarded to the authority responsible for determining status (the Territorial Commission, see below), which must hear the application within thirty days. The law, however, stipulates that the asylum-seeker - unless he/she falls within the category of aliens detained pending the investigation of their application (see above) - is given provisional authorisation for a three months' stay, renewable until the outcome of the procedure. The commission gives the decision in writing which states the grounds for reaching it, and this is adopted within three days of the hearing. Where the decision rejects an application, a deportation order is made against the applicant. The decision of the commission may be appealed to an ordinary court within fifteen days. The appeal, which may be made from abroad through diplomatic representations, does not suspend the deportation order. However, the appellant may, in a reasoned application, seek authorisation from the *prefetto* to stay in the country until the outcome of the appeal.

The simplified procedure: this concerns two categories of applicants: those who have lodged their application after being arrested for entering or illegally attempting to enter or for being in breach of the regulations, and those who, at the time their application was lodged, had already been served with an expulsion or *refoulement* order. In the first case, as

soon as their application is received, applicants are placed in an identification centre (CDI, see above). Their application is sent within a period of two days to the relevant Territorial Commission which hears the application within fifteen days and gives a decision within three days of the hearing. The types of remedy against the commission's decision are the same as for the ordinary procedure. If, at the end of the stipulated period for the simplified procedure (twenty days), the Territorial Commission has not reached a decision, the applicant leaves the CDI and is granted authorisation to stay for three months, which may be renewed until the outcome of the procedure. If the decision goes against the applicant, an expulsion order is also served on him/her.

In the second case (an alien seeking asylum whilst under a deportation order) the applicant is placed in a temporary detention centre (CPTA, see above). The procedure is then the same, although he/she may only be kept in detention for up to sixty days pending the decision.

7. Establishment of Territorial Commissions

As well as a *National Commission* to replace the Central Commission, the law establishes seven *Territorial Commissions* for granting the status of refugee, in order to increase the capacity to deal with asylum applications and to expedite the procedures. In this connection, the members of the mission were advised that the Minister of the Interior attached great importance to the fact that these decentralised commissions were situated closer to the identification centres (CDI) to reduce the time limits: the law stipulates in fact that the *prefetto* can set up the office of a Territorial Commission within the identification centre itself.

The National Commission, which can be subdivided into various sections, is a collection of representatives from the Ministries of the Interior and of Foreign Affairs, and from the presidency of the Council. A representative of the UNHCR may attend meetings of the National Commission. Its purpose is to define orientations, coordinate the activity of the Territorial Commissions and gather statistical information relating to asylum.

In terms of the presidential decree of 16 September 2004, seven commissions will be set up in Gorizia (for the regions of the North), in Milan (for the Lombardia, Val d'Aoste, Piemonte, Liguria, Emilia Romagna regions), in Rome (for the regions of Lazio, Campania, Abruzzo, Molise, Sardegna, Toscana, Marche, Umbria), in Foggia, (for Puglia), in Crotone (for Calabria and Basilicata), and in Syracuse and Trapani for Sicilia. When the asylum-seekers are placed in the

identification centres (CDIs) or the CPTAs, the relevant commission is the one in whose jurisdiction the centre lies. In other cases the relevant commission is the one in the region where the application has been made.

All the applicants are summoned before the Territorial Commission, as they are today before the Central Commission. They are heard in a language which they understand, the commission providing the necessary interpreters, and they may be represented by a lawyer. With regard to the interpreters, the inmates of the centres reported to the mission several instances of problems arising out of their lack of impartiality in some cases, leading to feelings of distrust on the part of the applicants which is highly detrimental to their discussions.

Except in the case where an applicant, placed in a CDI, has left it, making his/her application null and void (see above), the application may be examined in his/her absence where he/she has been duly summoned but has not appeared.

The Territorial Commissions include a representative of the *prefettura*, who acts as president, a police officer, a representative chosen by the municipal authorities and a representative of the UNHCR, who, unlike the case of the Central Commission, now has voting rights, whereas up till now the opinion of the UNHCR was purely consultative. In order to function, the system presupposes that the UNHCR is able, materially and financially, to ensure it is represented. The problem of financing the representation of the UNHCR on departmental commissions had not been resolved at the end of 2004. It was pointed out to the mission that the Ministry of Foreign Affairs did not have a budget for this, and it was suggested - but not in any detail - that a contribution might be made by the Ministry for Cooperation. The law stipulates, in addition, that where necessary - according to the nationality of some applicants, which necessitates exact information on their native country - a representative of the Ministry of Foreign Affairs may also be included.

Some questions on the operating of the decentralised commissions

At the time of the visit by the mission, this decentralised system was not yet in force. However, it was already commonplace for the Central Commission to travel to those regions of Italy where a huge number of asylum applications had been registered in order to hold hearings. For example, during the second week of December 2004, a series of hearings took place in Agrigento, in Sicilia. The prospect of the

general decentralisation of investigations into asylum applications received a mixed welcome according to the people to whom we spoke. Whereas, in principle, the aim of reducing waiting times and sparing asylum applicants the inconveniences connected with systematic transfer to Rome - which, up till now, they had been obliged to do -, is split, the new system also raises some concerns.

The first of these concerns relates to what means the State will allocate to the new system, which means not only providing officials, but also endeavouring to train personnel so that they can cope with the demands of the job. The mission has not yet received a clear response regarding the financing of the Territorial Commissions.

Another cause for concern are potential disparities in the treatment of applications by the different commissions, due, for example, to local pressure which might be exerted on them. In particular, the risks connected with having a representative from the local authorities in the Territorial Commissions have been noted. Insofar as the decision to grant refugee status to an alien entails, for the local authority, obligations to receive and integrate them, some of them fear that the criteria laid down by the commissions will stipulate *inter alia* that the shelter offered or the number of reception centres are adequate for the number of refugees admitted.

Questions have been raised also regarding the conditions for examining applications on the more than likely assumption that the commissions will be set up within the identification centres themselves: there can be no certainty that proximity to the place where, in fact, the people whose application is being examined are imprisoned and whose release is dependent on the decision, is conducive to the impartiality and independence necessary for hearing their application.

8. Deportation of asylum-seekers

The Bossi-Fini law has considerably modified the rules for deporting aliens, as regards measures taken for reasons of public order, or police measures for punishing illegal residence and illegal entry to the country. The framework of this report is limited to the analysis of two aspects of the deportation procedure: *refoulement* (*respingimento*), when aliens arrive at the frontier without the requisite papers for entry to Italy, and *expulsion* (*espulsione*) an order for which is served on aliens who have not acquired or who have lost the right to stay in Italy. The details of the legal procedure of these two forms of deportation will only be examined here insofar as this has an effect on the condition of asylum-seekers. Before

discussing the two measures, another provision should also be mentioned which was adopted in July 2003 under the heading of provisions for combating illegal immigration, and which constitutes, even before refoulement, a measure of “expelling” immigrants and potential asylum-seekers arriving by sea.

Interception at sea

A decree by the Ministry of the Interior¹⁵ stipulates measures for supervising and controlling territorial waters which enable the Italian navy, if it comes across ships carrying immigrants who are attempting to enter Italian territory illegally, to proceed to identify the ship’s flag and, if conditions permit, to turn it back and accompany it as far as the territorial waters of the country from whence it came. No particular method for identifying potential asylum-seekers among the passengers during these interceptions at sea has been envisaged.

Refoulement

The law¹⁶ stipulates that the border police turns back aliens who arrive at the border without having the necessary documents for entry to Italian territory. The same fate awaits, but this time on the authority of the *Questura*, those who, after attempting an illegal entry, are arrested at the frontier or just after. A third case of refoulement, a sort of legal device which saves the authorities from having to apply the regulations relating to aliens already resident in Italy, concerns those who, although they have not fulfilled the conditions of entry, have been accepted provisionally in Italian territory *per necessità di pubblico soccorso* (for humanitarian reasons): this is the case in particular with people who land on the coast or are rescued at sea. It is, however, specified that, in accordance with the Geneva Convention principle of non-refoulement, the law on refoulement does not apply to aliens who are lodging an asylum application: the fact that a refugee does not have a passport or a visa or that he/she is travelling with false papers should not be held against him/her.

There is, however, a real problem since, in order to be observed, this regulation presupposes that every alien who arrives from abroad without papers has to undergo an individual and in depth examination of his/her situation in order to assess whether he/she is a potential refugee. But there is good reason to believe that this examination is often

either superficial, or non-existent particularly in the case of huge numbers of arrivals, as, for example, when small boat-loads of immigrants run aground on the Italian coast. Many recent examples tend to show that in such circumstances, all the guarantees are not given to ensure full observation of the principle of non-refoulement. One wonders also what effective remedies are available to aliens whose refoulement is decided on the sole authority of the border police.

Expulsion

Once an asylum application has been rejected, an expulsion order is served on the applicant¹⁷, even though remedies are open to him/her against the decision of the commission. Before 2002, aliens who had been refused the right to stay in Italy received an order to leave the country within fifteen days, though in the majority of cases they retained their freedom, except in the rare cases where the order was executed immediately. The Bossi-Fini reform overturned this principle.

Detention before expulsion

Now immediate execution of the expulsion order is the norm along with mobilising the law enforcement agencies, and retaining one’s freedom is the exception. The law provides for this immediate execution by the detention of aliens who are in breach of the law (a category which includes asylum applicants as soon as their case is dismissed by the commission) in the temporary detention centres (CPTAs, see above) for a maximum of sixty days (thirty days previously). If, at the end of this period, the authorities have not managed to expel the alien (because it has not been possible to identify him/her, or due to the lack of the requisite travel documents), he/she is released with an order to leave the country within five days.

9. Judicial control over the expulsion order

Until 2004, there was no suspensive appeal against an expulsion decision. It was certainly possible for an alien to appeal against this order before a judge, but the appeal did not prevent the order from being carried out. Where an expulsion was executed immediately, the Bossi-Fini law also provided for the possibility of appealing outside Italy (once the alien had been expelled!) through diplomatic channels. These provisions were repealed by the Constitutional Court, which, in a decision of 15 July 2004, deemed this lack of effective appeal contrary to the Italian Constitution which stipulates

15. Decree of 14 July 2003

16. TU, art. 10

17. TU, art. 13

that any restriction on personal freedoms must be subject to formal judicial control which fully respects the right to a fair trial.

To take account of the demands of the Constitution, a new emergency system was set up by a decree passed in September 2004. Now, within 48 hours of the alien being notified of the immediate expulsion order, the case is brought before a district judge (*judge de paix*), who must give a decision within 48 hours on the expediency of the order. There is no question of a new right of appeal being made available to the alien, but rather a procedure for controlling the legality of the administrative placement decision. The alien appears before the district judge represented by a lawyer appointed by the state. Until the judge gives a decision, the order is suspended, and the alien is kept in a CPTA. If the judge upholds the order, it must be carried out immediately, even though the alien can still lodge a further appeal.

Many observers feel that this formula is an inadequate response to the demands of the Constitutional Court, verging on a ploy to get round them. District judges are not professional judges, being recruited mainly from the ranks of retired police officers, and are not specifically trained. Their competence to assess complex problems is highly questionable, as is their ability to take decisions, the effect of which is already grave as regards “classic” aliens, but is all the more so when they are asked to confirm the expulsion of persons who have applied for asylum and the procedure for which, as will be seen (see below) may still be under examination. The recent type of intervention by district judges in the expulsion process did not allow, at the time of the mission, to the incidences of it on the number of orders carried out. Conversations with aliens held in the several CPTAs visited gave the members of the mission the impression that appearing before the district judge, which happens within the CPTA itself, is more a formality in the process of expulsion than a judicial stage capable of modifying its progress.

10. Combining the right to appeal the asylum refusal and expulsion

With regard to asylum-seekers, the combination of the new procedures for immediate expulsion with their right to appeal the decision rejecting their application poses a problem. In fact, the appeal against the Commission’s decision is made before the court, but it is up to the *prefetto* (the administrative

authority) as to whether the expulsion order, given along with the dismissal, be suspended. According to some commentators, the legal basis of the *prefetto*’s competence is, in the case of asylum-seekers, challengeable, insofar as only the court has heard the evidence allowing it to assess the expediency of a suspension.

In fact, the case of an alien being expelled before his/her appeal against the refusal of his/her asylum application has been examined by the court is not uncommon. And although the law provides for the provisional return, if required in a criminal process, of an alien who has been expelled, nothing of this nature has been provided to allow an expelled asylum-seeker to return to Italy to enforce his/her rights. As a result, it could happen that the Commission’s refusals are annulled - and that the applicant’s right to residence as a refugee is recognised - although he/she has already been expelled from Italy.

11. Deportation procedures

The effectiveness of the new immediate expulsion system depends largely on the ability of the Italian authorities to put it into practice. There are three obstacles to this: firstly, identification of the alien to be expelled. The CPTAs and the CDIs are equipped for this, and every alien has to provide a set of fingerprints and photos on his/her arrival. It is general practice to X-ray the wrists of young immigrants to verify their claim to be minors. Then, there are the considerable problems of organising transport and the cost of expelling them. As regards the cost, according to the law, it is the carrier who transported the aliens without documentation to the Italian border who is responsible for the costs of sending them back to the country from whence they came¹⁸. As far as rationalising the deportations, the implementing decree of the Bossi-Fini law stipulates that in order to effectively implement the expulsions, including mass deportations, agreements may be made with transport companies, as well as with organisations (national or international) which are involved in providing aid for aliens¹⁹. An example of this are the services offered by the IOM (International Organisation for Migration) whose operations include assistance in repatriating illegal aliens. With regard to mass deportations, Italy has organised about sixty of these since 2001. Moreover, this is following the adoption this year by the UE of a community decision “concerning the joint organisation of communal flights for the mass deportation of third country nationals residing illegally on the territory of two or more member States” (commonly called “common charters”).

18. TU, art. 10

19. DPR 16 Sept. 2004, art. 17.8

Agreement with the destination countries

Lastly, sometimes the destination countries are unwilling to receive the aliens expelled from Italy under a deportation order, whether they are nationals of that country or not. In order to ensure that the deportations are effected, which is a prerequisite to the success the Italian government's policy to combat illegal immigration, it relies on the cooperation of the destination countries of the deportees. On the one hand, help from the embassies and consulates of the countries of which the persons held are shown to be nationals, is required - but the officials at the reception centres explained to us that the names of asylum-seekers were never sent to the relevant embassies. On the other hand, Italy is committed to a programme of entering into readmission agreements with a great number of countries of origin. At the end of 2004 it had signed 27 of these, including 13 with member countries of the EU, 8 with non-member European countries, 4 with African countries (the three Maghreb countries and Nigeria) and 2 with Asian countries²⁰. Within the framework of these agreements, the governments of the countries concerned undertake to facilitate the return of any of their nationals who are arrested for breach of regulations in Italy, and also, on occasion, nationals of other nationalities who have come to Italy after passing through their territory. The agreements

provide for active cooperation from the diplomatic authorities of the destination countries so that the procedures for delivering the documents necessary for repatriation can be simplified. For example, the Albanian authorities readmit their nationals, including those without papers, which speeds up the deportations considerably. With regard to non-EU countries, the Italian government intends moreover, following the example of its cooperation with Albania for the last few years, to link its policy of immigration and employment on the basis of quotas, as well as its policy for delivering visas, to the efforts made by third countries to cooperate in combating illegal immigration.

Apart from these formal agreements, "operational agreements" are entered into in the context of good neighbour relations with some neighbouring countries to link them with the fight against illegal immigration. For example, the agreement with Egypt, which led to 300 Sri-Lankan being deported from this country, by charter flights, to Colombo in November and December 2002, as they had stopped over in Egypt during their journey to Italy. There is also an unwritten agreement with Libya, which is described in the Ministry of Foreign Affairs as being controlled directly by the Ministry of the Interior (NB: neither Egypt nor Libya has entered into a readmission agreement with Italy).

DEPORTATION OF ALIENS 2000-2003				
	2000	2001	2002	2003
Aliens arrested for being in breach of regulations:				
Deported	69.263	77.699	88.501	65.153
Non repatriated	62.217	56.633	62.245	40.804
Total	131.480	134.332	150.746	105.957
Aliens actually deported:	69.263	77.699	88.501	65.153
Escorted back to the frontier	30.871	30.625	37.656	24.202
Escorted by the <i>questeurs</i>	11.350	10.433	6.139	3.195
Complying with an order	3.206	2.251	2.461	8.126
Expelled under escort to the frontier	15.002	21.266	24.799	18.844
Expelled in conformity with the AG provisions	396	373	427	885
Aliens readmitted to their country of origin on the basis of particular agreements	8.438	12.751	17.019	9.901

Source: D/P.S. – Central Department of Immigration and Frontier Police

20. Committee on Economic, Cultural and Social Rights: the Italian government's reply to national reports on the application of the International Covenant on Economic, Cultural and Social Rights, November 2004

12. Provisional conclusion: trends in the legal asylum system

The implementation, on the one hand, of the provisions of the Bossi-Fini law on asylum procedure, and the deportation on the other hand, have substantially upset the system of asylum previously in force in Italy. At the time of the mission it was too soon to assess the effect, as the new decentralised centres were not yet operational and the identification centres had not yet been officially set up. But, in light of present practice and legislation, the main emergent trends can be seen.

Detention as the main method of reception of asylum-seekers?

Given the fact that the majority of aliens applying for asylum reach the country by sea, without a visa and often without a passport, so “illegally” in terms of the law - even although the Geneva Convention on Refugees does not recognise the concept of illegal entry for refugees - and given the many cases in which the law stipulates that asylum-seekers may or must be detained in identification centres (CDIs), it is likely that the majority of them will now be detained on arrival, and for at least twenty days (the period of the *expedited* procedure). It should be noted that even when detention in a CDI is not compulsory, but possible in terms of the law (to verify documents for example), it is similar in fact to a house arrest, as the applicants cannot leave the CDI without giving up their asylum application.

The establishment of CDIs for the “compulsory” reception of asylum-seekers must be linked with the restrictions resulting from the adoption of the community directive 2003/9 regarding the minimum standards for receiving asylum-seekers. This directive, which was supposed to have been adopted by the member States in February 2005 at the latest, stipulates the necessary steps to be taken for the reception, during the asylum procedure, of applicants under conditions “which can ensure adequate living standards”, without formally excluding the possibility of obliging them “to remain in a specific place”. Whereas a solution for housing each applicant is required by this directive, and the national system for receiving asylum-seekers, the SPRAR (see box above), at present only covers a tiny proportion of the requirements, it

can be concluded that detentions in CDIs will be the Italian government’s response to this demand. This, however, is difficult to reconcile with the principle proposed by the same directive that “asylum-seekers may move freely within the territory of the host member State or within an area assigned to them by that member State”, as long as this area “shall not affect the unalienable sphere of private life and shall allow sufficient scope (...)”.

Risks of expedited procedures

The setting up of decentralised commissions for hearing asylum applications, along with the simplified procedure, in theory so that a decision could be reached within 20 days resulting in expulsion if the application is refused, had the stated aim of accelerating the asylum procedure. It is difficult to predict whether this aim will be achieved. But, although it is desirable that asylum-seekers are not subjected to excessive waiting times as was the case prior to 2004 (periods of over a year), a procedure which takes less than three weeks, on the other hand, runs the risk of not allowing the in depth examination required for some applications, especially when language problems necessitate an additional period for interpretation and translation of documents²¹. It can be noted that in the majority of national asylum systems, mainly those of the partner States of Italy in the EU, the expedited procedures, in all cases, have been set up alongside “normal” procedures to process more swiftly protection applications which are not thought - rightly or wrongly - to require exhaustive investigation to decide whether they are well-founded in principle or, on the other hand, totally inadmissible. This is not the choice given by Italian legislation, since the sole criterion for directing an application towards an expedited process is the applicant’s method of entering Italian territory. This criterion is questionable, as the fact of crossing the frontier without a visa does not in itself in any case constitute a presumption of misusing the asylum procedure.

Criminalisation of asylum-seekers

Although the Italian government has devoted considerable means to accelerating asylum procedures, mainly for the swifter deportation of asylum applicants, it was still too soon, at the beginning of 2005, to know to what extent this aim

21. In its Annual Report in 2003, the EU Network of Independent Experts on Fundamental Rights, in the chapter “Right of asylum”, finds it “particularly worrying” that with regard to the determination of asylum applications, “there appears to be [in the member countries] increasing reliance on what are known as ‘expedited procedures’ (...) in many cases without the possibility of appeal or only with a non-suspensive appeal, which, for this reason, lack the effectiveness required in article 13 of the European Convention on Human Rights”.

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would be achieved. In addition the law stipulates that the statutory time limits for proceeding to the enforced deportation of aliens may be extended (on the expiry of sixty days at the end of which the alien detained in a CPTA cannot be detained): if the administrative authorities have not been able to organise the expulsion, mainly due to their inability to obtain the identity or travel documents required by the country of origin or the destination country, the alien is released, and he/she is served an order to leave the country within five days. In fact it is more likely that he/she will stay in the country, without a residence permit, in conditions which are precarious both administratively and socially, and under the threat of criminal punishment if called in for questioning, since failure to observe an expulsion order is a crime by law.

The members of the mission were able to meet foreigners who were on their second or third stay in a CPTA, punctuated by short spells of freedom then a term in prison. As the asylum applicants nonsuited by the commission and pending appeal are not protected by such a procedure, there is a fear that instead of the deportation of asylum applicants being expedited, they will be detained in the country as criminals when they leave the CPTAs.

Taking the case of an asylum applicant who enters Italy without a visa, it is not therefore impossible that, by applying a combination of the different regulations set up by the Bossi-Fini law, he/she will spend more than twenty-four days in detention before finally being released in irregular situation.

Arrival in Italy
without any visa
→ Arrest
→ Asylum application →
detention in CDI →

CDI
20 days
simplified
procedure
→ dismissal by the
commission
→ appeal (non
suspensive)
→ expulsion
order →

detention
in CPTA →

CPTA
30 days + 30 days
expulsion order is held
without execution
→ after 60 days liberation with order
to leave the country within 5 days

III - VISITS MADE BY THE MISSION

The importance of reception and detention sites has varied over the last few years according to the country of origin of those entering Italy. For example, for the major part of the 1990s, the centres on the South West coast of the country (Puglia and Basilicata) received several thousand immigrants from the Balkans, Albania, Bosnia and Kosovo in particular. The influx of the 1990s also included considerable contingents of Somalians and Kurds. Since 2000, the importance of these centres has decreased, due to a drop in the influx from the Balkans. On the other hand, since 2000, the West coast of Sicilia has become one of the most important reception areas, with the huge arrival of migrants from the Maghreb countries and black Africa, who board ship essentially in Tunisia and Libya. Lastly, the frontier with Slovenia still sees a considerable influx of migrants from Central Europe and, increasingly, from the Middle and Far East.

It is because of these developments that the mission has decided to concentrate its investigation on Sicilia, which has four centres (Trapani, Caltanissetta, Raguse, Lampedusa). A fifth centre, at Agrigento, was closed in December 2004 after a visit from the Council of Europe Committee for the Prevention of Torture. On the whole, the activity of these centres has increased considerably over the last two years. The mission visited the centres at Trapani, Caltanissetta and Lampedusa, before completing its survey on how the CPTAs operate with a visit to the centre at Ponte Galleria, near Rome airport. The mission was also able to visit several of the reception centres for asylum-seekers, in Sicilia and in Rome. Lastly there is a report on its visit to the Tiburtina squat, in Rome, occupied mainly by asylum-seekers.

1. The “Serraino Vulpitta” CPTA in Trapani

The Serraino Vulpitta CPTA, in the town of Trapani, reopened its doors on 24 June 2004. It had been closed on 22 November 2003 “for restructuring” following several incidents reported in the press, which were recounted to us by the associations in Trapani and for which we have requested explanations from the centre authorities. Before its closure, the Trapani CPTA had been criticised by several associations which had been able to visit it, in particular MSF (*Médecins sans Frontières*), for the poor state of its infrastructures and the conditions of detention. This centre, which was capable of receiving 57 people, in rooms of 5 or 10 beds, should be

closed for once and for all in mid 2006 and be transferred to a new more modern building, with a capacity of 200 places. This new centre will be situated outside the town, on the site of a former military airfield.

The average stay in the Trapani CPTA is one month. 35 to 40% of those who enter the CPTA are expelled.

Until 1999, the CPTA had a female section. The alleged behaviour of the police towards the women had led to a considerable uprising at the start of 1999. A fire, started by inmates to enable them to escape, had caused the death of three people. Following these incidents, the female section had been closed. Four years later, following a further uprising, a second deliberate fire broke out on 13 September 2003, causing slight injuries to several of the “rebels”. Following this incident, 6 people were imprisoned in Trapani jail. One of them attempted, in prison, to slit his/her wrists. The associations working on this CPTA indicated to us that cases of self mutilation were frequent there and that, until its closure in November 2003, it was notorious for its systematic distribution of tranquilizers to the detained aliens.

The authorities and managers of the CPTA received the mission on 8 December. The mission was met by:

- Dr Nicoló D'ANGELO, of the Trapani *questura*,
- Giuseppe LA PORTA, of the Trapani *prefettura*,
- Giacomo MANCUSO, coordinating director of the management of the CPTA,
- Giuseppe SCOZZARI, president of the cooperative, INSIEME-ONLUS, which manages the CPTA.

- *How the centre operates*

These officials described how the centre operated and what services were provided for the “guests”. The centre has the same services as all the CPTAs: medical assistance, social and psychological assistance. It also has a socio-cultural mediator and two full-time interpreters. The television has all the satellite channels and there is a residents' library. During our visit, there were 23 people staying at the centre. Housed in a former retirement home built in the 1920s, its infrastructure is somewhat dilapidated despite recent repairs. The dormitories are relatively spacious, which gives the impression of space: except for the beds - which have only the bare essentials: non-woven sheets, no pillowcases for the

non-woven pillows, one blanket - there is no furniture. The only personal effects which can be seen are shoes and milk bottles on the floor, under the beds, or on the windowsill. We were told that the detainees had a personal locker outside the dormitories.

During an interview with Antonina Gardella, the social worker for the CPTA, the mission was able to clarify certain information: Mrs Gardella, who has worked at the centre for four years, has seen a hardening of legislation over the years, and the procedures for appealing against expulsion becoming increasingly difficult. She said that expulsions had been notified due to errors on the part of the immigration services or the *questures*. In one case of error, she had been able to have an appeal lodged in time by a lawyer, which appeal had been accepted. But on the whole her role was very limited. She gives some support to the detainees, who can speak to her in confidence (the door of her office is closed during their meetings, even though it is situated just behind the surveillance office which is permanently occupied by at least two police officers), gives information on the procedure, and acts as an intermediary between the detainees and the police. But she has hardly any room for manoeuvre with regard to the main, if not sole, request of the residents which is to leave the centre as quickly as possible.

Near the Trapani CPTA there is a reception centre (which operates as an identification centre) with a maximum capacity of 215 places, which was closed at the time of the mission's visit. The immigrants landing on the island of Pantelleria are immediately transferred to Trapani, which, over the last few months, has also received immigrants who landed at Lampedusa. In the event of huge boatloads landing on one or other island, special flights are organised to the Trapani reception centre. Persons received there are distributed among the CPTAs in Sicilia or the rest of Italy depending on available places, when they have not immediately been sent back to their country of origin.

- *Meetings with the residents*

Amongst the various meetings the members of the mission had with the foreign detainees, was one with a Tunisian, who had spent several years in Italy and had worked there for some time before it was discovered that he was suffering from a cardiac problem. After undergoing an operation in Palermo hospital he was unable to have his papers renewed as he was asked to provide an employment contract, which he could not do because of his ill health. He made an application for disability pension which is current, and applied for a

residence permit by providing documents proving his state of health. The investigation procedure at the *prefettura* dragged on for some time and resulted in him being arrested and put in a CPTA for deportation. He seemed to us to be extremely concerned about his health, told us he had had several "crises" since arriving at the centre, and had asked on several occasions without success to see his attending physician in Palermo; however he was not taken seriously in the CPTA due to the fact that he had undergone an electrocardiogram and the results had been normal. This diagnosis was to have been confirmed to the mission by the CPTA doctor, who explained to us, nevertheless, that he was going to telephone the physician the very next day- as the visit had taken place on a public holiday.

2. The "Pian del Lago" CPT/CDA at Caltanissetta

Caltanissetta is a model for the future "multifunctioning" centres hoped for by the Minister of the Interior (see above) since it comprises, in a single site, a CPTA and what, at the time of the mission's visit, was known as a CDA (reception centre) and now known as a CDI (identification centre for asylum-seekers). Caltanissetta is in Sicily, far from the coast. Its CPTA-CDA, situated outside the town, receives individuals who have entered a reception area and are then sent to the internal centres. The two centres are adjoining, but are physically separated to comply with the legal provisions in force. In actual fact, the visitor goes through an initial gate and enters a huge space comprising the common parts (car parks) and the buildings of the CDA, and within which are the railings of the CPTA, which is completely closed and access to which is gained by going through a second series of gates. The mission visited the centre on 9 December 2004.

The mission was received by:

- Giuseppina FALZONE, head of the social department of the controlling body of the *prefettura* of Caltanissetta
- Carmelo LAPAGLIA, head of the Caltanissetta CPTA-CDA,
- Salvatore COPPOLINO, deputy director of the Immigration Board of Caltanissetta,
- Dr Anne SANTAMARIA, director of health of the CPTA-CDA

The CPTA

- *How the centre operates*

The Caltanissetta CPTA opened in August 2000. Its capacity is 92 places. At the time of our visit, there were 76 persons there. Like all the CPTAs, it is reserved for aliens pending expulsion, whose detention must be notified within 48 hours to the district judge in whose jurisdiction the centre lies.

Since opening in September 2004, 4,581 people awaiting expulsion have passed through the Caltanissetta CPTA, 60% to 80% of whom, depending on the terms, have just completed a prison sentence. The proportion of former prisoners in the population of the centre is one of the highest of the CPTAs in Italy. The other inmates of the centre were called in for questioning when they were illegal residents.

The fate of these 4,581 people is as follows: 1,600 of them were actually deported and 334 asylum applications were accepted. The remaining 2,647 were all released at the end of the maximum detention period of 60 days. For the first eight months of 2004, 788 people passed through the centre, 487 of whom have been deported. This recent increase in the proportion of deportations illustrates the Italian government's willingness to be seen as far stricter than it was with regard to the treatment of those it describes as "illegal".

With regard to the conditions for receiving and treating the detainees²², the Caltanissetta centre appeared to the mission as the best run centre in Sicilia. The environment and living conditions are proper. The "guests" are distributed among three air-conditioned wings, each containing four rooms with six beds. Each wing has six WCs and four shower-rooms. Each "guest" has a locker. They also have a local "recreation room" (games, television), as well as an outdoor exercise area. The centre has a 24 hours medical service operated by five alternating doctors. It also has a social worker and a psychologist, and five full-time interpreters, which allows the managers of the centre to communicate in most of the languages spoken by the entrants. Visits permitted without prior authorisation are those by the detainees' lawyers, members of their families and ministers of religion, or persons authorised by law. Other visits may be authorised on request at the *prefettura*. The centre authorities explained to us that they allow some flexibility in the visiting hours. They made very clear to the mission their willingness to receive as best as possible the "guests" of the CPTA, to provide them with the best possible living conditions and the chance of various activities. They also emphasised their concern to promote social interaction and indicated that violence among the inmates was extremely rare in the Caltanissetta CPTA. The mission was aware throughout its visit of the constant presence of many intermediaries (mediators, interpreters, police officers) around the "guests" - to the extent that holding confidential meetings was sometimes difficult -, which in fact gave the impression of a friendly relationship.

With regard to health conditions, the two full-time doctors during our visit indicated to us that the most frequent illnesses are dental problems, respiratory illnesses, bronchitis, gastritis and mycosis. The doctors feel these are logical illnesses, given that most of the detainees are heavy smokers and coffee drinkers.

- The mission also met with several inmates

A Moroccan agricultural worker without papers who had been resident in Italy for two years and arrested at an identity check. A group of 25 Bengalis who arrived in Italy 2 months and 10 days previously after passing through India, Turkey and Greece. They stayed 9 days in Lampedusa before being transferred to Caltanissetta. Before our visit, two of them had just had their asylum application accepted and the others were wondering why all the group had not been treated in the same way.

A group of 17 Romanians with identity papers but no residence permit for Italy. Most of them were agricultural workers before their arrest. They all claimed to have been quickly deported since they had identity papers and asked why they were still being detained.

A Tunisian and a Romanian just out of prison and awaiting deportation.

An Iraqi, who had arrived in Lampedusa by boat a short while ago, and was transferred to the CDA for identification, after trying to escape from the CDA, and for this reason recaptured by the police and put in CPTA for deportation.

The CDA

- How the centre operates

The Caltanissetta CDA, which opened in February 2004, has a maximum of 150 places which it is planned to increase to 400. This extension is due to the fact that this CDA is to become an identification centre (CDI). It is the only centre of this type visited by the mission. For the time being, it has 15 "Algeco" prefabricated wings with ten rooms each (bunk beds), one of which is reserved for women. From the day it opened until 30 September 2004, 1,288 people, including 400 who have had their asylum application refused and have been deported, have stayed there. Half of those awaiting an expulsion order have passed through the adjoining CPTA. The others have received a three months residence permit, while their application is being examined by the Commission. According to

22. The Report will not dwell in detail on the detention conditions of the foreigners and on the services provided by the centres (washing, food, care, etc.). Its aim is in fact to look into the conditions for entry and residency decreed by Italy and into the situation of illegal immigrants and asylum seekers. For more details on the detention conditions, we would refer you to the two reports by MSF Italy and by the Council of Europe listed in the appendix.

the centre officials, 80% of the asylum-seekers who have stayed at Caltanissetta think of Italy as a transit country and intend to settle in another EU country.

Most of the people who have stayed in the centre are Egyptians, Somalians, Eritreans, Sudanis, Kurds and Bangladeshis. At the time of our visit, there were also a dozen Chinese, most of whom were women.

A legal advice service is available full-time at the centre, the role of which is to help aliens prepare their asylum application and lodge it with the *questura*. This is also the link between the aliens and their lawyers, when they have one.

- *Meeting with the inmates*

The mission met several of the asylum-seekers residents at the CDA, including a group of Sudanis mostly from Darfur and who had come via Libya to get to Sicily. Some had been there for 65 days. They all complained of not being allowed to leave the centre, even after a two months stay. However, in principle, the regime of the CDA (the future CDI) is not a prison regime, and although the “guests” who leave the CDA are deemed to have renounced their asylum application, nothing should prevent them from leaving temporarily, at least during the day (see above). The officials at the centre pointed out to us that the “guests” were “free within the centre” and that they could leave as soon as they obtained their papers confirming they were asylum-seekers, pending their hearing before the Territorial Commission. Some aliens also told us they had no telephone card and had not been able to join their family, even for the Aid festival at the end of the month of Ramadan. The centre authorities however indicated to us that the “guests” were able to telephone out. But, without fixed telephone booths, only those with mobile phones could do this in fact. For at the CDA, as in the CPTAs visited by the mission, mobile phones (in general very limited in number) could only receive calls and not make them. The mission also met an Algerian who had been in the centre for 50 days and who, due to the Dublin Convention, had passed through Germany and Austria before being sent to Italy.

All the reception and detention structures at Caltanissetta are managed by the Albatros cooperative.

3. The Lampedusa CPTA/CPA

Today the majority of migrants who set sail from the Libyan and Tunisian coasts disembark on that part of Italian territory, the

island of Lampedusa near the Libyan coast. For two years there has been a massive influx from the African coast. So the Lampedusa centre has become the most ‘famous’ in Italy as a result of the Italian government’s policy of massive expulsions which has been operating since October 2004. Whereas this policy looks as if it is becoming the rule, it is nevertheless a fact that the Italian coast guards carry out significant rescue activities for small craft, sometimes travelling up to 90 nautical miles from the coast to fetch them after trouble has been reported. The people rescued by the coast guards are then handed over to the *carabinieri* (Italian police officers). Many voices have been raised in Italy asking the Italian government to stop expelling people which state employees continue to save on a regular basis.

The Lampedusa CPTA is above all a first reception and aid centre, which mainly operates as a transit centre. Theoretically migrants arriving there do not stay but are dispatched according to the room available in other CPTA’s, particularly in Sicily and in the South of Italy. The centre adjoins Lampedusa airport, which is practically in the town.

The mission visited the centre on 10 December and was met by:

- Massimo BASILE, chief inspector of the Immigration Office
- Inspector Antonino CAFÁ, from Immigration Head Office
- Inspector Antonino DIFEDE, from Immigration Head Office
- Dr Fatima CELONA, manageress of the *questura* (DIGOS)
- Claudio SCALIA from the Misericordia Association, Head of management at the centre
- Roberto RAPISARDA, police superintendent CC

Functioning of the centre

During the first 11 months of 2004, the Lampedusa centre has seen 10,000 people pass through its doors, of whom 5.6% were minors and 1.62% women. The people arriving stay at the centre for 48 hours on average before being transferred to centres in Sicily, the Pouilles (in Southern Italy) or the Crotona centre in Calabria. At the time of the mission’s visit, the centre, with a maximum capacity of 189 places, was accommodating 84 people. This had been greatly exceeded on several occasions when an enormous number of people had disembarked at the same time. On these occasions, according to witnesses who had visited the centre during these ‘peak’ periods, the newcomers are held in deplorable conditions from the point of view of overcrowding and hygiene.

Those who were interviewing us affirmed that, because the existing centre is near an airport zone and does not offer

sufficient guarantees of security, the authorities have decided to close it and open one with a capacity of 500 places in order to avoid such situations. The new centre which should be in operation from March 2005, is situated in a disused barracks inland. It would appear that this is why the present centre, built in 1998 and never renovated, is extremely rundown with very rustic living conditions. No repairs have been carried out since the announcement that it would be relocated. At the time of the mission's visit, the premises were relatively clean but in an extremely bad state. The living areas are prefabricated buildings, one of the buildings being reserved for women (14 beds with one child's bed). In the sanitary blocks, the WCs which apparently have no doors open straight on to the communal area containing the washbasins.

At the time of our visit, of the 84 detainees, 65 had already received their notification of expulsion and were awaiting the arrival both of the district judge whose duty it would be to assess the legality of the measure and of the court-appointed lawyer. According to those interviewed, only 10% of those arriving ask for refugee status. They assured us that all the information necessary to make such a request was supplied to them and that a charter of their rights and duties (a copy of which was given to members of the mission) was distributed in several languages. They explained that the number of asylum-seekers was small because foreigners do not want to be 'filed' as such, hoping to take advantage of the weakness of Italian legislation which allows people to be freed if not expelled after 60 days detention in CPTA.

There is a large number of personnel allocated to the centre: 40 *carabinieri* (police), are permanently in charge of 'vigilance'. There are 25 persons on duty from Misericordia, plus the doctor, nurse and psychologist.

Members of the mission were able to talk to the centre's doctor and nurse who, along with those in charge, told us that MSF (*Médecins sans Frontières* ie Doctors without Borders) - who, after being denied access to the centre had, thanks to the intervention of the Migrant Workers' Special Rapporteur of the United Nations Commission on Human Rights, obtained the authorization to be present at disembarkations - carry out a 'first selection' medical examination on the new arrivals in order to pick out those whose state of health necessitates hospitalisation. In fact, it is often the case that people who have been at sea for several days, or even weeks, are totally dehydrated in summer and suffer from hypothermia in winter. The mission also met MSF personnel living on the island who explained that the 'selection' at the port sorted out those capable of walking who were transferred to the centre and

those incapable of standing up who were hospitalised. In this way, out of the 180 people who arrived at the beginning of December, 6 were declared to be very ill. At the centre itself, the most frequent health problems were coughs and bronchitis.

Interviews with the residents

The mission interviewed several residents. From among the 180 people who had arrived about 10 days before the visit - mainly Palestinians, Iraklis and natives of several sub-Saharan African countries -, 120 had been sent to various centres in Italy. 57 people had also arrived a few days earlier. A Moroccan resident awaiting expulsion described to us how he, along with 13 other people, had been rescued at sea by Italian fishermen who had then handed them over to the coast guards. The mission also met an agricultural worker who, having no papers had been employed in Sicily for 18 years, before finally being arrested on this account, and a group of young Algerians who had arrived via Libya and who had been in the centre for 23 days.

4. The Ponte Galleria CPTA in Rome

On 13 December the mission visited the Ponte Galleria CPTA. This centre has 300 places of which 180 are reserved for women. The areas reserved for men and women are separate. In many ways the centre operates as a transit centre in view of its proximity to Rome-Fiumicino airport. However it is a long way from Ponte Galleria town centre and 3 kilometres from the station, making it difficult for residents to receive visitors.

Functioning of the centre

At the time of our visit the centre was accommodating 200 people, 120 of whom were women. Most of the men came from the Maghreb (North Africa) and the Middle East and the women were mostly Nigerians and Rumanians. 20% of the resident males had come from prison. The average stay was 20 days, most of the people having already been identified when they arrived. Yugoslavian nationals pose the greatest identification problem as, more often than not, they do not possess passports issued by the new States which have emerged from the dividing up of Yugoslavia. Most of the residents are asylum-seekers whose applications have been rejected and persons on the point of being expelled. The latter may seek asylum at the centre. On average there are three of these applications per day mostly by Nigerians over the last few months. The manager of the centre told us that 90% of these requests are 'instrumental'. It should be noted that 3 to 4% of the expulsion notices are invalidated by the magistrate.

The living conditions are not different from those in the other centres, and the Ponte Galleria centre has the same infrastructure and personnel. It is managed by the Italian Red Cross which employs 60 persons on site.

Members of the mission talked to two of the centre's doctors, a general practitioner and a gynecologist who informed us that there was a high incidence of vaginal thrush among the new arrivals. She confirmed what had been clear when we interviewed the women from the Ukraine and Nigeria, that most of the women living at Ponte Galleria are prostitutes. Many men are drug addicts. The prostitutes often pose a serious problem in that, when not expelled, many of them refuse to go out for fear of falling into the hands of their pimps again. The doctors told us that some of them are terrified by the very idea. The San Egidio Association as well as Father Francesco de Luccia, who has been visiting the centre one day per week since January 2004, take the most serious cases in hand. The doctors confirmed what members of the mission thought when they first interviewed the residents: there is a very high degree of stress at Ponte Galleria and visible distress amongst many of the residents.

Whereas the physical conditions of the accommodation are decent, Ponte Galleria, more than the other centres visited, gives visitors the impression of a prison where things are run in a far more professional manner, probably because of the proximity of the airport. It is difficult for the detainees to communicate with the outside world: besides the problems of access for potential visitors (see above), it is impossible, except for those who possess a cell phone, to receive phone calls without going through the dubious intermediary of the Red Cross. The distance coupled with the lack of communication affect the lives of the inmates. Whereas many of those expelled have often lived for a long time in Italy, they can be forced to leave the country without recovering either the money held in a bank account or their goods and personal effects, because they have been unable to make contact with anybody who could bring or send their possessions to them. A typical case would be that of a detainee who explained to us that he had earned money working while he was in prison (more than 500 Euros) but although he had made the request several times through the Red Cross, his money had still not been returned to him and he needed it to pay for a lawyer. When the mission questioned the Red Cross concerning the problems of money transfer, they admitted that in certain cases foreigners were expelled without receiving money which belonged to them.

Regarding assistance for asylum-seekers, Father de Luccia helps them prepare for their appearance in front of the Commission. Nuns also go to the women's section. When we spoke to Father de Luccia in Rome he explained that 2/3 of the male residents came out of prison and 2/3 of the women had been street walkers. He also told us about his bad relationship with the police at the centre 'whose aim is to expel as many people as possible'.

- Interviews with the residents

The mission interviewed quite a large number of the centre's residents. There they met the only person (an Indian) during their whole stay who complained of being ill-treated in police custody²³. This man told us that he had been hit while in the police station and had been left 2 days without food. It was also in the Ponte Galleria centre that the mission met people who had been caught in a raid in places which were supposed to shelter illegal immigrants. In Lavinio in the suburbs of Rome, 9 Indians - out of a community of around 700 persons - were said to have been arrested during a raid. A Roma from Yugoslavia who had been living in Italy for 13 years told us that he had been at the centre for 43 days following a raid on a Romany camp in Sicily. Finally several people told us that they had been declared undocumented immigrants because their residence permits were out of date. Several persons living at the centre had lodged an appeal knowing that it was non-suspensive.

5. "Hotel Africa", disused Tiburtina station in Rome

This was a complex of three vast disused industrial buildings which had been serving as a squat for several years. In the past this complex had received up to 500 persons, mostly Ethiopians and Eritreans seeking asylum. In August 2004 several hundred Sudanese were evacuated in order to be lodged elsewhere in better reception conditions. But quite a number of them wish to come back to Tiburtina where they would return to familiar community structures.

At the time of our visit, one single building was occupied by about 80 persons of whom fewer than 10 were women, a majority being Sudanese mainly from Darfur but also from the South. Among the Sudanese were also some jandjaws (members of government militia) claiming to have been enrolled by force. Most of the residents were asylum-seekers, but several were immigrants whose papers were not in order and who were living there because they had no money.

23. However, during the mission's visit, the trial of Don Cesare Lo Deserto, director of the CPTA Regina Pacis de San Foca was taking place with 6 of his collaborators, as well as the trial of 11 *carabinieri* and 2 doctors, accused of physical and moral violence against 17 migrants in December 2002.

The Tiburtina squat has emptied partly because of the relocation mentioned above but also on account of the establishment in October 2004 of a new squat on the Collatina Road, a little farther out in the Rome suburbs. Newcomers go there in preference to Tiburtina as the buildings are former offices where conditions are far more comfortable according to descriptions we have received.

Until *MSF Italy* intervened, the sanitary and medical conditions of this squat were deplorable as were the inhabitants' conditions of hygiene: 2 WCs for the entire population and no rubbish collection. Apart from setting up an infirmary with surgeries once a week, MSF managed to persuade the council to install extra WCs and taps. These facilities have made the place more habitable, although things are still extremely makeshift with very dilapidated buildings and no heating.

This squat functions independently with two groceries, a restaurant and a mosque. The inhabitants have created private spaces separated by planks and curtains. The communities living there are very hierarchical and structured, but this makes no difference to the extreme degree of violence which prevails.

Prostitution seems to be the standard occupation for the women several of whom have had an abortion. The police hardly ever put in an appearance.

The interviews: among those interviewed, the mission remembers the case of a young 27 year old Eritrean living at the squat whom MSF had helped in the preparation of the dossier requesting refugee status. This Eritrean whose education was of secondary school level fled his country after being rounded up to enrol in the army. He had deserted and spent a year in military prison before managing to escape again. The mission also recorded the testimony of a man from Southern Sudan who had arrived in Italy via Libya where he had spent a year working to pay his passage to Europe. After arriving in Lampedusa by boat, he was immediately transferred to another centre in Sicily, then to Crotona in Calabria where he submitted a request for asylum and after 2 months obtained a residence permit on humanitarian grounds. Invited by the centre's authorities to leave for Rome he followed a compatriot who had heard about Tiburtina, where he is still residing, because he has not found regular work which would allow him to live anywhere else.

IV - THE 2004 EXPULSIONS

During their stay, members of the mission studied two events of 2004 which caused scandal in Italy and across Europe. They sought to obtain precise information about these two incidents from the authorities, and the associations and people who had tried to aid those expelled. Another episode led a cargo ship (the *Lydia Oldendorff*) carrying 13 Turkish Kurd passengers to be stationed for 2 weeks off Malta, waiting for the Italian authorities to approve their leave for Italy.

1. The affair of *Cap Anamur*

On June 20, 2004, the *Cap Anamur*, a German NGO ship of the same name stationed in Cologne, picked up in open sea 37 passengers claiming to be Sudanese from Darfur. They were found on an inflatable boat drifting in international waters between the Libyan coast and the island of Lampedusa, and were requesting authorization to come into a berth in Italy. After refusing at first, on July 11, the Italian authorities finally granted the request on purely humanitarian grounds, upon the insistence of many NGOs and the UNHCR (UN High Commissioner for Refugees).

As soon as the disembarkation took place, the boat was impounded and those in charge of the crew were accused of assisting clandestine immigration and were incarcerated. The passengers - referred to as 'clandestine' in official declarations - were transferred to the Caltanissetta CPTA-CDA, where they requested asylum. Several people (elected representatives and activists) tried in vain to reach the Centre and offer them legal assistance. On July 14, in a public intervention regarding the affair, the Minister of the Interior judged these requests 'inadmissible on the evidence' but declared that he would prefer that they be examined by the Central Commission. On July 16, the captain and sailors were set free but forbidden to stay in southern Italy. On July 17, 14 people identified as Nigerians were transferred to the Ponte Galleria (Rome) CPTA to be expelled. On the same day, the Central Commission rejected the requests of 22 others. Only one of those who escaped, who claimed not to be Sudanese, was placed in a reception centre at Agrigento. On behalf of the 14 in Rome, on July 20, an urgent appeal was made against the expulsion order; another appeal was made for all of them before the European Court of Human Rights.

But during the night of July 20, 5 of them were sent back to Nigeria while the 22 remaining in Sicily were transferred to Rome. On July 22, the European Court of Human Rights in Strasbourg asked the Italian government to suspend all the expulsions awaiting an examination of the basis of the appeal. This was too late, for during the night of July the 21st, 25 people had been sent back to Ghana. The last 6 from the *Cap Anamur* were also to be sent back to Ghana on July 26, with the exception of one who had disembarked when the boat docked at Milan and was incarcerated in a CPTA before being set free. On July 30, the Rome tribunal accepted the appeal of the 14 from the Ponte Galleria CPT, approving reexamination of their request for asylum. However, that is now moot because they have already been sent back.

The *Cap Anamur* incident, which attracted much press during the Summer of 2004, still holds people's attention for several reasons. On the one hand, it conveys the hit-and-miss nature of border control procedures and the loopholes in asylum procedures regarding the respect of the rights to defense and the rights of refugees, which are provided for not only in Italian law - which prohibits the expulsion of asylum-seekers - but also in international conventions, particularly in the Geneva Convention with respect to refugees. The CIR (Italian Council for Refugees) censured the attitude of a State "which violates its own rules"²⁴. The ASGI (The Association for the Legal Study of Immigration) denounced the expulsion measures at the frontiers, which deny a priori access to the asylum procedure to potential asylum-seekers, thus violating the principle of non-expulsion established by the Geneva Convention²⁵. Moreover, Amnesty International has loudly protested the infringements of international law by the Italian government (rights of refugees and rights at sea)²⁶.

2. The refoulements to Libya of October 2004

It goes without saying that the accounts of these refoulements vary according to their source: whether they were provided by the authorities or the association and parliamentarians of the opposition who were present.

On the basis of the information provided to the mission from all these sources, one can draw the following conclusions:

24. CIR, communiqué of the 22nd of July 2004

25. ASGI, communiqué of the 13th of July 2004

26. AI Italy, communiqué of the 9th July 2004

- The Italian authorities did not follow the legal procedure in identifying the individuals prior to their refoulement proceedings, and consequently did not allow them to effectively make their asylum requests. Despite the assertions of the Minister of the Interior, the Director of the Lampedusa Centre and the police that the legal procedure was respected, all of the witnesses and common sense defy this, insofar as it would be impossible to identify several hundred persons in less than 48 hours. According to the Minister of the Interior²⁷, between September 29 and October 6, 1787 persons arrived by boat in Lampedusa. Among these, 544 including the asylum-seekers were transferred to the Crotona, Ragusa and Caltanissetta centres. The remaining 1153, identified “one by one”, were refused entry into the territory and were readmitted in Libya. This group of persons included 1119 Egyptians, 11 Moroccans and 23 Bangladeshis²⁸.

The managers of the center with whom the mission consulted, deny all responsibility in the management of this affair, as do the police officers and the *questure* of Agrigento, with respect to the selection of persons intended for refoulement. “A delegation from the Ministry of the Interior arrived in Rome, accompanied by several interpreters”, they indicated to us, which was confirmed by the Minister of the Interior. Similarly, the high executives of the Ministry of the Interior whom the mission met with on December 13 in Rome confirmed that the identification procedure of the arriving persons was carried out in accordance with standard norms and that the authorities warned the new arrivals that they could request refugee or asylum status for humanitarian reasons.

According to the statements of the various witness provided to the parliamentarians who were present during the first days of the expulsions, several elements prove that there was no registration of the new arrivals. In this centre, generally, one provides persons who arrive with a notice explaining that the identification proceedings shall take place at the centre to which they shall be transferred. This is because Lampedusa

is in principle simply a transit location. There is in any case no *ad hoc* police infrastructure, as the *carabinieri* are present only to maintain security and not to ensure registration.

Graver than the failure to carry out the formal registration according to usual practice (this could have been adapted given the urgency and number of persons involved - a “lighter” manual process, not computerized, could have been implemented to register the identities of the persons), it appears that the “identification” was essentially based on the intuition of the two interpreters present (a Moroccan and a Tunisian) to accord to the migrants a different nationality than that claimed. This is why the majority were declared Egyptian despite the fact that a large number of the new arrivals declared themselves to be Palestinian.

Despite the repeated claims of the parliamentarians, the authorities have not yet presented a list of the persons who arrived at Lampedusa during the first 10 days of October, a list that should have been made available if these persons were actually identified. The government was twice requested by the Chamber of Deputies to provide a statement thereof, first during the operation and a second time one week later. On behalf of the Foreign Affairs Commission of the Senate, Senator Tana de Zulueta requested in writing that the government provide the precise list of persons expelled. She received no response. During its meeting on October 13 with the Ministry of the Interior, the mission made the same request. The authorities claimed that they could take into consideration only written requests.

- The Italian authorities did not ensure that the receiving countries of the refouled foreigners present the necessary guarantees regarding respect for human rights. Indeed, Libya is not a signatory to the Geneva Convention and Italy has not yet signed any readmission agreement with this country. However, our official interlocutors attested that Libya, having ratified the African Charter on Human and Peoples’ Rights and in its role as President of the Commission

27. In a speech to the Deputies Chamber, October 8, 2004

28. According to an internal note of the Ministry of Interior of which the mission learned, the numbers being slightly different than those provided by the Ministry. The “ordre de grandeur” however remains the same. In accordance with this note, the turning backs are carried out according to the following rhythm from Lampedusa to Tripoli:

01/10: one passenger flight of 90 persons,

02/10: one passenger flight of 90 persons plus 2 military flights transporting 150 persons,

03/10: 4 military flights having transported 280 persons and 2 passenger flights of 180 persons,

04/10: one passenger flight of 90 persons,

06/10: 4 military flights transporting 273 persons,

09/10: one passenger flight of 90 persons.

on Human Rights of the United Nations ensured the respect for human rights in the eyes of the Italian government. The representatives of the Ministry of the Interior also told the mission that the refoulements could now be carried out more easily, since the strengthening of cooperation with “sending” countries or migrant transit countries. Senator Tana de Zulueta officially requested that the government specify the nature of the agreements passed between Italy and Libya in matters of border control cooperation. To date, Ms. de Zulueta has still not received a response.

To avoid the risk of sanction for a breach of rules governing expulsions that require validation by a district judge, the word “expulsion” was not used in any government declaration (see in particular the speech of the Minister of the Interior Pisanu at the Chamber of Deputies on October 8), but was replaced by the word “*respingimento*” (refoulement).

- **The Italian authorities tried to prevent the entry of outside observers.** Consequently, the HCR delegate who arrived upon the announcement of the first massive arrival was refused entry into the centre for five days before finally being admitted. Despite the denials of the representatives of the centre, which explained to the mission that these refusals were for “security reasons”, it appears that they were intended to mask the deplorable conditions in which the new arrivals were detained in this centre, as well as the lack of identification proceedings for potential asylum-seekers. Similarly, the regional deputy Calogero Micciché, who arrived on the morning of October 7, was not granted admission into the centre until early evening.

- The associations and parliamentarians who obtained access to the center consider the **presence of minors** within the arriving persons to be highly likely, who were however not recognized as such and turned back as adults, which is prohibited by Italian law.

- **The Italian authorities did not ensure minimal sanitary conditions for the arriving persons.** According to all oral witness statements as well as those published in the press, namely that of the Regional Deputy of Sicily, Calogero Micciché, the new arrivals slept on the floor, as the authorities had not so much as provided them with a blanket. There were insufficient toilets which overflowed during this period, causing a suffocating odor in the centre. Deputy Micciché stated that the conditions of stay in the centre were “unacceptable”, as persons were forced to sleep on the floor amidst excrement.

In relation to the medical examinations theoretically required

for all arriving persons, according to the testimony of Senator Tana de Zulueta, the doctor in charge of the infirmary, with whom the mission met, was not present at the time of the expulsions and only arrived on October 9. His predecessor, a retired doctor was alone during the entire operation, was not able to carry out all medical controls as provided for by law, given the great number of persons and the material conditions. He expressed his concern in relation to the manner in which things were being conducted to Ms. de Zulueta. Despite the terrible sanitary conditions, neither the managers of the centre, nor the delegation of the Ministry of the Interior called on hospital resources that exist on the island. “The only thing that was not lacking was water”, specified Deputy Micciché. Despite all these similar testimonies, the personnel of the medical centre, with whom the mission insisted on holding a meeting and who appear to be very dependent on the authorities of the center, assured the mission that all new arrivals in October had received medical attention.

3. The case of the Kurds of Lydia Oldendorff

On October 9, 2004, the authorities of the Italian port of Gioia Tauro refused to register the asylum requests presented by 13 Turks of Kurdish origin, of which two were minors, and made them reboard the cargo ship *Lydia Oldendorff*, on which they had traveled illegally from Turkey. Despite this ship’s having later, on October 14, arrived in La Valette, a port in Malta, these passengers were not authorized to enter, as Maltese authorities claimed that they were not responsible for the treatment of their asylum requests. The *Lydia Oldendorff*, whose next destination was Turkey, consequently docked off of Malta for over two weeks; its captain delayed his return so as not to endanger the lives of these asylum-seekers, who were nationals of this country. Only after a long delay, on October 26, and after two representatives of the Italian UNHCR delegation, who had in vain tried to negotiate with the authorities of these two countries, got on board the cargo ship and described the conditions of distress and extreme stress of the passengers, that the Italian government finally accepted their requests and authorized them to enter Sicily.

These three episodes demonstrate a defensive reaction of the Italian authorities in relation to a phenomenon that they interpret to be an aggression against Italy, i.e. the regular arrival on its coast of sub-Saharan migrants considered to be “illegal” and seeking to thwart the legal asylum procedures. In this context, it is clear that the response of the Italian government was intended both to resolve the problem as well as to call indirectly on European public opinion. The *Cap*

Anamur case and Lampedusa have marked the beginnings of a European debate that is not finished in 2005: in reaction to the events of July, the Italian and German ministers launched the idea, immediately transferred to and discussed by the EU institutions, to implement “reception centres” (*portails d’accueil*) in the North African countries from which the majority of African migrants come, to take in and filter the migrants seeking to reach Europe. The Italian management of the *Cap Anamur* case, in the same vein as the large-scale

migrant expulsions later organized from Lampedusa to Libya and the removal of the Kurds of *Lydia Oldendorff*, is part of a double strategy seeking to call on: first, the countries of origin, to dissuade potential asylum-seekers and migrants, by informing them that there is no point in trying to illegally enter Italy; second, the EU partners, by warning them not to consider that the problems Italy is facing because of its geographic location are its sole responsibility.

CONCLUSIONS AND RECOMMENDATIONS

Despite receiving relatively few asylum claims in comparison with its European partners, in 2002 Italy began a series of legislative reforms on asylum. Those reforms as well as the rules on the expulsion of foreign nationals and a somewhat disorganised management results in inconsistencies between various domestic texts and raises questions as to conformity with international law. At the time of the mission, the last implementing texts of the asylum laws known as the 2002 “Bossi-Fini Law” had not yet entered into force. Nevertheless, the general trend of these texts was already clear. The FIDH consequently issues the following observations and recommendations:

Access to immigration procedures

Italian Law in accordance with the 1951 Geneva Conventions on Refugees (art. 33) forbids the return (refoulement) of foreign nationals who lodge an asylum application. However, those who illegally enter or try to enter the country and in particular those who arrive by sea are often returned as “illegal immigrants” before being allowed to make themselves known (when intercepted at sea) or to lodge an application. At the end of 2004, several events witnessed that situation, as those of Lampedusa and of the *Lydia Oldendorff* boat.

Interception at Sea

1. In all maritime control operations, refugees and asylum-seekers should have access to international protection and should not to be returned to the frontiers of territories where their life or freedom would be threatened, in accordance with conclusion n°97-2003 of the Executive Committee of the UN High Commissioner for Refugees on Protection Safeguards in Interception Measures.

At the Border

2. Legal procedures providing for the individual examination of asylum applications with the assistance, when relevant, of an interpreter and a lawyer, should be systematically and fully applied to all foreigners who lodge an asylum application at the border.

If legislation is amended to take into include specific procedures for the treatment of asylum applications at the border, then it should:

3. Integrate the minimum standards included in the Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, agreed on 19 November 2004 (so-called directive “procedures”). This Amended Proposal lists the guarantees applicable to asylum-seekers, even in the event of a mass influx of people. Among those guarantees is their right to an interview with someone “fully qualified in the field of asylum and refugee matters”.

Asylum Procedure

Simplified procedure

The simplified procedure aims at processing rapidly the asylum applications made by a foreigner when he is crossing border or just crossed the border illegally. Such a criteria is totally unjustified. The illegality of the conditions of access to the territory by asylum-seekers can in no way be sanctioned under the Geneva Convention of 1951 (art. 31). In addition, the simplified procedure violates the principle of non-discrimination between illegal and legal migrants when they use their fundamental right to apply for asylum. Italy consequently violates Article 2 § 1 of the International Covenant on Civil and Political Rights.²⁹ The law should consequently be amended in order to:

4. Consider separately the modalities of entry and the treatment of asylum applications.

Right to a remedy

The law states that if an asylum application is rejected, the applicant has a non suspensive right of appeal. The applicant may consequently be returned and no longer be in Italy when he receives the definitive decision. The possibility to lodge an appeal via the Italian Consulate in his country of origin is unrealistic as regards asylum-seekers. This provision diverges from the so-called “Procedures” EU Proposal of Directive

29. According to General Comment n° 18 of the UN Human Rights Committee “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights” (par.1). Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof (General Comment n° 15, par.2). See also CERD General Recommendation n° 30 on Discrimination against Non-Citizens and various reports of the UN Special Rapporteur on Migrant Workers (in particular /CN.4/2003/85 et A/59/377).

because of its systematic nature; it also carry heavy consequences for asylum-seekers, who are detained in identification centres where their application is examined under the simplified “procedure”, because they might be expelled in less than twenty days without being able to appeal the negative decision.

5. Enshrine the right to a suspensive appeal for asylum-seekers whose application have been rejected, notably in the case of simplified procedure.

Reception of Asylum-Seekers

The method of decentralised reception of asylum-seekers (SPRAR) is partly funded by the state and the general opinion is that it is in adequacy with the needs of the people concerned. However, it is notoriously insufficient. With a budget of 38 million Euros for the reception of asylum-seekers (opposed to 164 million Euros for the expulsions’ policy), the Italian government covers less than 10% of the needs. Asylum-seekers are not allowed to work legally which prevents many asylum-seekers of the possibility to have a decent life. The time limit of 45 days for state financial allowance to asylum-seekers and the limited reach of the SPRAR (only 10% of asylum-seekers benefit from it) result in largely insufficient health care support. This situation is not in conformity with the requirements of Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum-seekers. Two complementary orientations must be adopted in order to improve the situation:

6. Allow asylum-seekers to work at least as soon as the period during which they are entitled to state assistance has elapsed; and extend health care to all asylum-seekers.

7. Substantially increase the budget for the reception of asylum-seekers.

Detention of Asylum-Seekers

Nearly systematic placement in Identification Centres upon arrival

The Identification Centres were created by the Bossi-Fini Law in 2002 to extend the existing CPTA regime of administrative detention for foreigners awaiting expulsion, to asylum-seekers. Although the status of those Centres makes them

distinct from the CPTA, in reality it is another form of detention, which targets the majority of the asylum-seekers coming to Italy (the vast majority of them cross the border illegally). Even if it aims at “identifying” them, such a systematic detention upon arrival is contrary to the Italian legislation and contradicts numerous international standards. For instance the 1999 Guidelines On Applicable Criteria and Standards relating to the Detention of Asylum-Seekers of the UNHCR provide that asylum-seekers may only be detained for a minimal period for a preliminary interview to identify the basis of the asylum claim. In addition, the UN Human Rights Committee considers that detention of illegal immigrants (by Australia in the case concerned) violates article 9 § 1 of the ICCPR. The legislation should be amended to:

8. Put an end to the nearly systematic detention of asylum-seekers upon their arrival in Italy in Identification Centres, as is currently prescribed by the law, so that detention only takes place in exceptional circumstances and for a very short period.

Detention during the whole procedure

Taken in combination with the simplified procedure for the examination of asylum claims, the system allows the detention of asylum-seekers during the entire procedure to deal with their asylum application. If that procedure takes no longer than 20 days, they might even be detained until they are expelled if their application is rejected in that time frame. This hypothesis, which may become the norm, is contrary to all the principles that govern the right to seek asylum. The Guidelines mentioned above make it a principle that asylum-seekers should not be detained. The exceptions to that principle must be “necessary”, notably in relation to the protection of public order. That situation also violates Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

The regime and modalities of detention of asylum-seekers in Identification Centres must be modified in order to:

9. Limit the detention of asylum-seekers in Identification Centres to the strict minimum limits as spelled out in the previous section. Transform Identification Centres into open first reception centres where asylum-seekers enjoy complete freedom of movement until a more suitable accommodation is found.

The CPTA

Length of Stay

The CPTA were largely criticised even before the maximum length of stay was increased from 30 to 60 days. The CPTA are even less suited to the accommodation of people for periods of up to two months. In addition, it has not been demonstrated that this makes expulsions more efficient: at the end of two months a high percentage of foreigners are allowed to leave the centre (although in illegal situation).

10. Reduce to a minimum the detention of foreigners who are waiting to be expelled.

Regime in place and the control of the centres

Foreigners and asylum-seekers detained in temporary detention centres and the future Identification Centres benefit from lesser guarantees and legal protection than the prisoners detained in jails. This is notably true as regards the right to an effective remedy against a detention accompanied by a decision of expulsion with immediate effect. Although since September 2004 the law provides for the intervention of a first level judge, it is unsure whether in practice this is sufficient to ensure effective respect of the UN International Covenant on Civil and Political Rights (art. 9.4)³⁰, which lays down the right to take proceedings before a court against detention. There is also the problem of a lack of contact with the outside world. Although the centres are well staffed, the personnel is in majority in charge of security (with an important police presence). The interaction with cultural mediators and social workers is not sufficient to respond to the requirements in terms of legal information which the asylum-seekers need to make their way in a complex legal system. The law on Identification Centres acknowledges the possibility for

recognised organisations working on asylum to have access to the centres; it is important to expand upon this:

11. Allow access to the CPTA and CDI for representatives from NGOs active in the field of asylum; restrictions on access should be justified by the administration.

The limits on the number of people authorised to visit the CPTA undermines transparency on both the proceedings and the general functioning of the centres, including their finances, for which there is no centralised monitoring procedure.

12. Create an independent body to monitor the management and the functioning of the centres, and to check whether detainees have access to the information they need.

Expulsions

In the current system put in place to improve the implementation of decisions of expulsion, the agreements concluded with the countries of origin or transit countries play an increasingly important role. That method, through formal re-admission agreements or “operational understandings” concluded between Italy and third parties, is questionable when combined with fast tracked expulsions of potential asylum-seekers and when the third country does not offer adequate human rights guarantees for migrants and asylum-seekers.

13. Not conclude formal or informal agreements concerning the re-admission of migrants to countries that do not respect human rights and the right of asylum, in particular when those countries did not ratify the Geneva Convention on Refugees or are well-known for human rights abuses.

30. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

APPENDICES

Appendix 1: People and institutions met by the mission

Mario Lana, lawyer, President of the UFTDU, member organisation of the FIDH
Calogero Miccichè, regional MP for Green Sicily
Giovanni Annaloro, lawyer in Caltanissetta
Dario Malizzia, lawyer in Palermo
Luca Inzerilo, volunteer lawyer at CILSS in Palermo
Several members of the Mission Hope-Charity, Palermo
Maurizio Giambalvo, Association NEPST (Nuova energia per il territorio), Palermo
Father Francesco De Luccia, JRS, Rome
Carla Peruzzo, medical co-ordinator of MSF Lampedusa
Diego Toffanin, MSF Lampedusa
Alessandra Sciurba (Palermo), Valeria Bertolino (Trapani), Sicilian Anti-racist network
Mediterranean Economic and Social in Palermo, public structure specialised in the support of charities and groups
Good Pastor Schools specialising in welcoming women victims of domestic violence including many women claiming leave to remain
Fulvio Vassallo Paleologu, Professor of Law at Palermo University and director of CILSS (International South-South co-operation). This centre works above all on issues of international co-operation between Palestine and Central America and houses a reception centre for refugees in Palermo
Rino Serri, President of CIR (Italian Refugee Council)
Christopher Hein, Director of CIR
Luca Riccardi, member of the San Egidio Community and Vice-president of CIR
Dr Marco Di Gingi, general director of UNAR (National Office Against Racial Discrimination), Minister for Equal Opportunity
Dr Bernadette Nicotra, judge, UNAR
Dr Mariaterasa Poli, jurist, UNAR

Chiara Aciarini, Nuccio Iovene, Francesco Martone, Tana de Zulueta, Senators
Nicoletta Dentico et Maurizio Gressi, coordinators of the White Book on the CPT
Celina Frondizi, lawyer
Alessandra Ballerini, lawyer
Paolo Tordiglione, MDM
Loris de Filippi, Giulia Binazzi, MSF, Rome
Filippo Miraglia, ARCI
Le Quyen Ngo Dinh, Elena Marioni, Caritas
Michele Manca di Nissa, representative of the UNHCR

Home Office

Prefect Anna Maria D'Ascenzo, Director, Civil liberties and immigration department
Vincenza Filippi, Vice-prefect, civil liberties and immigration department
Angelo Carbone, Civil liberties and immigration department
Dionisio Spoliti, Director of Civil Service for immigration and asylum
Michele Lepri Galleramo, co-director civil liberties and immigration department
Walter Crudo, Deputy prefect, direction of immigration and border controls
Tiziana Liquori, Immigration department, illegal immigrant division
Giovanni Pinto, Department of public security

Foreign Office

Adriano Benedetti, general director of the direction of Italians abroad and immigration
Andrea Bertozzi, DG of Italians Abroad and Immigration

Appendix 2: List of CPTA/CDI

CPTA Turin "Brunelleschi"
CPTA Milan "Via Corelli"
CPTA Modèna "La Marmora"
CPTA Bologna "Enrico Mattei"
CPTA Rome "Ponte Galleria"
CPTA San Foca di Melendugno (Lecce) "Regina Pacis"
CPTA Brindisi "Restinco"
CPTA Lamezia Terme "Malgradotutto"

CPTA Caltanissetta "Pian del Lago"
CPTA Trapani "Serraino Vulpitta"
CPTA Foggia "Borgo Mezzanone"
CPTA Lampedusa

CDI Bari "Bari-Palese"
CDI Otrante "Don Tonino Bello" (Lecce)
CDI Crotona "Sainte Anne"

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United Nations

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Council of Europe

CoE - Committee for the Prevention of Torture (CPT)

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CoE - Parliamentary Assembly

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CoE - Committee of Ministers

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Appendix 4: Selection of General Comments of the United Nations Human Rights Committee and Committee on the Elimination of All Forms of Racial Discrimination concerning the treatment of aliens, migrants and asylum seekers, in case of deprivation of freedom and expulsion or refoulement

The **UN Human Rights Committee** adopted a number of recommendations in order to (...) stimulate the activities of these States and international organizations in the promotion and protection of human rights. Several of those recommendations take the form of General Comments, clarify various provisions of the Covenant, and concern directly or indirectly the treatment of migrants and asylum-seekers in states parties to the Covenant, notably regarding conditions of detention and deprivation of liberty, refoulements or expulsions.

The Committee consequently considers:

General Comment n°15 on the Position of aliens under the Covenant

- "In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness".
- "Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant".

General Comment n°9 on Humane treatment of persons deprived of their liberty

- "The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources. While the Committee is aware that in other respects the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination, as required by article 2 (1), which states that 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant' (...)".
- "Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions".

General Comment n°21 on Humane treatment of persons deprived of their liberty

- That rights, enshrined in Article 10 of the International Covenant on Civil and Political Rights, "applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals -, detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held".
- "Not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7 (No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment), but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment".

General Comment n°20 on the Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment

- "It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity".
- "The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority".

In its **General Recommendation XXII on article 5 (of the Convention on the Elimination of All Forms of Racial Discrimination) on refugees and displaced persons**, recalling the Geneva Convention on refugees of 1951 and its Protocol of 1967, “the main source of the international system for the protection of refugees in general”, the Committee for the elimination of racial discrimination stresses that:

- “States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees”.

Compilation of general comments and general recommendations adopted by Human Rights Treaty Bodies, 12/05/2004. HRI/GEN/1/Rev.7.

Appendix 5: Note on the principles relating to the detention of Asylum-Seekers in international legal instruments

Administrative internment as a method of managing the situation of foreigners who submit an asylum application is contrary to the principles laid down by the international legal instruments relevant to this matter. At the very most it can be allowed for a very short duration, on the arrival of the asylum-seeker to a country's territory, for the purpose of identification, if they arrive there without travel documents, until they have drawn up their application. The fact that a national law permits the detention of foreigners who have entered or are staying in the country illegally is not sufficient to justify its implementation in regard to asylum-seekers.

In its *Guidelines on applicable criteria to the detention of asylum-seekers* (1999), the Executive Committee (ExCom) of the United Nations High Commission for Refugees (HCR) states that, so as not to be arbitrary, the detention applied to asylum-seekers must comply not only with the national law of the states, but also with art. 31 of the Geneva Convention of 1951, concerning refugees (GC), and to the international law on human rights.

Article 31 of the GC prescribes that::

- 31(1) "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...], enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

- 31(2) "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

NB: The expression "refugees" in the sense of art. 31 applies not only to recognised refugees, but also to asylum-seekers awaiting determination of their status, in accordance with the recognised nature of refugee status.

Drawing on art. 14 of the Universal Declaration of Human Rights (UDHR), according to which the right to seek asylum is a human right, the *Guidelines* lay down as a principle that asylum-seekers must not be detained. The exceptions to this principle must be

prescribed by law, if they come within the field of "necessary" restrictions in the sense of art. 31-2 GGC. According to *Conclusion N°44 (XXXVII) ExCom* of the HCR relating to the detention of asylum-seekers and refugees (1986), detention, which must never assume an automatic character, that can be qualified as a "necessary restriction" are:

- the time to determine the identity of the asylum-seeker;
- in the context of a preliminary interview, in order to identify the foundation of the asylum application (but under no circumstances for the whole duration of the determination procedure);
- in the case where the asylum-seeker has voluntarily sought to withhold their travel or identity documents with the intention of misleading the authorities;
- to protect national security and public order (this refers to circumstances where the asylum-seeker has a criminal history or when there is evidence to show that their admission to the territory would be liable to pose a problem for national security or public order).

Conclusion N°44 ExCom specifies that a detention policy whose aim is to deter future asylum-seekers, or to incite asylum-seekers to withdraw their applications, does not come within the field of "necessary restrictions". Neither does the invocation of an emergency, for example in the case of the simultaneous arrival of a large number of asylum-seekers, justify their placement in "closed camps", if this placement is not accompanied by an immediate search for solutions.

In its *Resolution 2000/01 on the detention of asylum-seekers* (2000), the United Nations Sub-Commission for the Promotion and Protection of Human Rights, protecting against certain detention practices and policies likely to contravene the international principles, norms and regulations concerning human rights, or dissuade people from seeking refuge from persecution, strongly urges the States to honour their respective international obligations concerning detention practices and policies in regard of asylum-seekers (...) and encourages [them] to adopt methods alternative to detention.

Deliberation N°5 on the situation of immigrants and asylum-seekers by the United Nations Working Group on Arbitrary Detention (2000) considers for its part that every asylum-seeker or immigrant placed in detention must be introduced in a short time to a legal authority or other (...) and that a time limit must be prescribed by law, detention under no circumstances being indefinite or of an excessive duration (...).

In the *Recommendation on the detention measures of asylum-seekers* (Rec(2003)5, 16 April 2003), the Committee of Ministers of the Council of Europe refers to art. 5 of the European Convention of Human Rights and Fundamental Freedoms (ECHR) of 1950 and sets out a certain number of principles, with a view to strictly restricting the terms under which an asylum-seeker can be placed in detention. For the most part these principles repeat *Conclusion No 44 ExCom* of the HCR, cited previously.

Article 5 ECHR

- Everyone has the right to liberty and security of person. No one shall be deprived of this right, save in the following cases and in accordance with a procedure prescribed by law (...):
 - f) ...the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for their arrest (...).
- Everyone arrested or detained (...) shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Art. 2 Additional Protocol N° 4 to the ECHR

1. Everybody lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (...).
No restrictions shall be placed on the exercise of these rights other than, such as are in accordance with law, are necessary in a democratic society in the interests of national security and public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health and morals, or

of the protection of the rights or freedoms of others.

In its judgement *Amuur v. France*, the EHR Court ruled that the detainment of asylum-seekers in an airport zone passes from the status of “restriction” of the freedom of movement, in the sense of art. 2 of *Protocol N°4*, to that of “deprivation of freedom”, as prohibited by art. 5 ECHR, if it is prolonged beyond a certain period.

Recommendation 1327 concerning the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, by the Parliamentary Assembly of the Council of Europe (1997), “urges the member states (vii):

- to give priority to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems;
- to develop and disseminate clear criteria for the identification of asylum-seekers to be detained, in compliance with *Conclusion N°44 (XXXVII) “Detention of Refugees and Asylum-Seekers”* adopted by the Executive Committee of UNHCR in 1986, specifying that unaccompanied children may not be detained;
- to introduce into their asylum laws rules on a maximum allowed period of detention of asylum-seekers, if they have not already done so ;”

Minors

Most of the texts mentioned exclude a priori the detention of minors who are asylum-seekers, especially when they are unaccompanied. The *United Nations Convention on the Right of the Child*, of 1990, which urges the signatory states to provide special treatment to refugee children or those seeking asylum in accordance with the principles that it sets out (art. 22), asks them to ensure that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” (art. 37.b).

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141 organisations

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Algeria-Ligue Algérienne de Défense des Droits de l'Homme
Algeria-Ligue Algérienne des Droits de l'Homme
Argentina-Centro de Estudios Legales y Sociales
Argentina-Comite de Accion Juridica
Argentina-Liga Argentina por los Derechos del Hombre
Austria-Österreichische Liga für Menschenrechte
Azerbaijan-Human Rights Center of Azerbaijan
Bahrain-Bahrain Human Rights Society
Bangladesh-Odhikar
Belarus-Human Rights Center Viasna
Belgium-Liga Voor Menschenrechten
Belgium-Ligue des Droits de l'Homme
Benin-Ligue pour la Défense des Droits de l'Homme au Bénin
Bhutan-People's Forum for Human Rights in Bhutan (Nepal)
Bolivia-Asamblea Permanente de los Derechos Humanos de Bolivia
Brazil-Centro de Justicia Global
Brazil-Movimento Nacional de Direitos Humanos
Burkina Faso-Mouvement Burkinabe des Droits de l'Homme & des Peuples
Burundi-Ligue Burundaise des Droits de l'Homme
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Cambodia-Ligue Cambodienne de Défense des Droits de l'Homme
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Egypt-Egyptian Organization for Human Rights
Egypt-Human Rights Association for the Assistance of Prisoners
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French Polynesia-Ligue Polynésienne des Droits Humains
Georgia-Human Rights Information and Documentation Center
Germany-Internationale Liga für Menschenrechte
Greece-Ligue Hellénique des Droits de l'Homme
Guatemala-Centro Para la Accion Legal en Derechos Humanos
Guatemala-Comisión de Derechos Humanos de Guatemala
Guinea-Organisation Guinéenne pour la Défense des Droits de l'Homme
Guinea Bissau-Liga Guineense dos Direitos do Homem
Iran-Centre des Défenseurs des Droits de l'Homme en Iran
Iran (France)-Ligue de Défense des Droits de l'Homme en Iran
Iraq (United Kingdom)-Iraqi Network for Human Rights Culture and Development
Ireland-Irish Council for Civil Liberties
Israel-Adalah
Israel-Association for Civil Rights in Israel
Israel-B'tselem
Israel-Public Committee Against Torture in Israel
Italy-Liga Italiana Dei Diritti Dell'uomo
Italy-Unione Forense Per la Tutela Dei Diritti Dell'uomo
Ivory Coast-Ligue Ivoirienne des Droits de l'Homme
Ivory Coast-Mouvement Ivoirien des Droits de l'Homme
Jordan-Amman Center for Human Rights Studies
Jordanie-Jordan Society for Human Rights
Kenya-Kenya Human Rights Commission
Kosovo-Conseil pour la Défense des Droits de l'Homme et des Libertés
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Senegal-Rencontre Africaine pour la Défense des Droits de l'Homme
Serbia and Montenegro-Center for Antirwar Action - Council for Human Rights
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Spain-Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos
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