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Italy/Arbitrary Detention: Un Expert Body Calls For Action To End Over-Incarceration And To Protect Rights Of Migrants

11 July 2014

GENEVA / ROME (11 July 2014) – The United Nations Working Group on Arbitrary Detention today urged the Government of Italy to take extraordinary steps, such as alternative measures to detention, to end over-incarceration and to protect the rights of migrants.

"Release is the remedy when minimum standards cannot be met in other ways," said human rights expert, Mads Andenas, who heads the Working Group, at the end of a three-day visit to Italy to follow up on the implementation of the recommendations issued after the 2008 visit of the Working Group.*

"Prompt and sustained action in the next phase is required by Italy to ensure compliance with human rights standards," Mr. Andenas stressed. "We call on the Italian authorities to comply with our recommendations on over-incarceration and the *Torreggiani* judgment of the European Court of Human Rights."

"We are pleased to see the measures the Government has undertaken to implement our recommendations. We are further encouraged by the open and rights-based dialogue in the legislative, executive and judicial branches on issues of arbitrary detention", he added.

The expert noted that several of the recommendations in President Napolitano's 2013 Letter to Parliament on detention, including the proposals for amnesty and clemency, and the 2013 Annual Report of the First President of the Supreme Court are more urgent today to secure compliance with international law.

The Working Group welcomed the recent reforms reducing the length of sentences, overcrowding in the penitentiary establishments, and the use of pre-trial detention. According to article 8 of *Decreto legge* 92/2014, pre-trial detention cannot be applied in cases where the judge considers that the defendant, if found guilty, will be sentenced to three years or less or given a suspended sentence. "This would reduce the inappropriate use of pre-trial detention as a penalty," Mr. Andenas noted.

Concerns remained, however, with regard to the high number of pre-trial detainees, and there is a need to monitor and remedy the disproportionate application of pre-trial detention in the case of foreign nationals and Roma, including minors.

Positive measures in the criminal justice system included the Constitutional Court's judgment setting aside the indiscriminately higher penalties for minor drugs offences which, followed by recent legislation, gave effect to the requirement of proportionality as stated in international human rights law. The same applies to the

relaxation of the disproportionate penalties for repeat offenders.

Noting that Italy does not have a general policy of mandatory detention of all asylum seekers and migrants in an irregular situation, as opposed to some other European countries, the Working Group welcomed the recent abolition of migration as an aggravating circumstance in criminal law and steps taken by the Parliament to abrogate the crime of "illegal entry and stay". However, it noted with concern that the latter remains an administrative offence.

"We also remain seriously concerned about the length of administrative detention (with a statutory maximum duration of 18 months) and the conditions of detention in the Identification and Expulsion Centres (CIEs) but are encouraged by recent legislative initiatives to reduce the maximum period of detention of irregular migrants to 12, or even six, months", Mr. Andenas said.

According to the jurisprudence of the Working Group, "migration-related detention should be a last resort and only for the shortest period of time", the expert added. "We urge the Government to reduce the length of the detention in the CIEs to the period of time strictly necessary for the identification."

"We found that a significant number of detainees in CIEs are foreign nationals convicted of criminal offences who were subsequently remanded into these centres", he further observed. "We call on the Government to avoid the transfer to CIEs of convicted migrants who should be identified during their detention in prison."

The Working Group also noted with particular concern reports of summary returns of individuals, including in some cases unaccompanied minors and adult asylum seekers, in the context of bilateral readmission agreements, mainly due to inadequate or non-existing screening that fail to determine age or to inform them of their rights.

"Such summary returns violate Italy's obligations under national, European and international law to ensure access to a fair asylum procedure and protection against refoulement, as well as the prohibition of expulsion of unaccompanied minors," Mr. Andenas underscored.

The expert noted that the special detention regime for mafia offenders under article 41 bis of the Law on the Penitentiary System has not yet been brought in compliance with international human rights requirements. While welcoming the Constitutional Court judgment on access to defense counsel, the Working Group regretted that the Government had so far not undertaken any measures to sufficiently strengthen and expedite the judicial review of the orders imposing or extending this form of detention.

"Any such restrictive measures must be reviewed on a regular basis in order to ensure their compliance with the principles of necessity and proportionality," Mr. Andenas said.

The Working Group also examined efforts taken to close the Judicial Psychiatric Hospitals and transfer their competence to regional substitutive healthcare structures. "We regret that the deadline for implementing the reform of the psychiatric system has been postponed twice but are encouraged by the fact that the most recent legislative initiative foresees assessment of all individual cases as well as strict reporting and monitoring requirements with regard to progress made," Mr. Andenas noted.

In the context of monitoring places of detention, the Working Group welcomed the recent ratification of the Optional Protocol to the Convention against Torture and the establishment of the National Guarantor of the rights of detainees. It regretted, however that the Government had not yet established an independent national human rights institution in accordance with the Paris Principles.

Noting bills currently before Parliament, the Working Group urged the Government to prioritize the establishment of such an institution with a broad human rights mandate and the necessary human and financial resources for its effective functioning. It also encouraged prompt adoption of the bill on the specific crime of torture.

The Working Group continues to evaluate measures to follow up its recommendations to remedy excessive delays in the criminal, civil and administrative justice systems, application of anti-terrorist measures and the lack of accountability for police brutality. It has also sought information about the detention of socially dangerous individuals, and the legality and review of locking up individuals suffering from dementia in institutional and home care.

The Working Group was much encouraged by the fruitful engagement with the Italian Government, parliamentarians, the judiciary and broader civil society. "There is a clear realisation at different levels of the need for further effort in several areas to prevent arbitrary deprivation of liberty," Mr. Andenas said.

"We will submit a follow-up report to the United Nations Human Rights Council with more detailed observations and recommendations and I hope that our external review may be taken as a constructive contribution to the Italian political, legislative and judicial processes," he concluded.

(*) Check the Working Group's 2008 report on Italy (A/HRC/10/21/Add.5):
<http://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>

The Working Group on Arbitrary Detention was established by the former Commission on Human Rights in 1991 to investigate instances of alleged arbitrary deprivation of liberty. Its mandate was clarified and extended by the Commission to cover the issue of administrative custody of asylum-seekers and immigrants. In 2010, the Human Rights Council confirmed the scope of the Working Group's mandate and extended it for a further three-year period in September 2013.

The Working Group is comprised of five independent expert members from various regions of the world. The Chair-Rapporteur is Mr. Mads Andenas (Norway) and the Vice-Chair is Mr. Vladimir Tochilovsky (Ukraine). Other members include Ms. Shaheen Sardar Ali (Pakistan), Mr. José Guevara (Mexico) and Mr. Sètondji Roland Jean-Baptiste Adjovi (Benin). Learn more, log on to:
<http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

UN Human Rights, country page – Italy: <http://www.ohchr.org/EN/countries/ENACARegion/Pages/ITIndex.aspx>

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