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Italy: New "counter-terrorist" legislation jeopardizes exercise of human rights

On 1 August 2005, the lower house of the Italian parliament approved a decree which outlines a set of new "counter-terrorist" measures. Amnesty International is concerned that some of the decree's provisions violate internationally recognized human rights laws and standards.

The decree provides that individuals can be kept in custody for up to 24 hours without charge, compared to 12 hours before the enactment of the decree. The decree allows law enforcement authorities to interrogate suspects without the suspect having a lawyer present, thus eliminating an important safeguard against torture as well as a protection of the right to a fair trial. It will also be possible for an executive authority (a prefect) -- not a judge -- to expel from Italy a person who is residing in Italy legally, determining that expulsion on *prima facie* evidence that the person poses a security threat to Italy.

Amnesty International condemns every form of attack on civilians, by state actors and non-state actors alike. Amnesty International respects the right of every state to implement measures which are aimed at protecting the physical safety and integrity of its residents and territory in a manner that fully respects international law and standards. However, Amnesty International is deeply concerned that these new measures violate internationally recognized human rights laws and standards.

To interrogate a detained person without that person having the right to have a lawyer present violates Principle 1 of the Basic Principles on the Role of Lawyers, Principle 17(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Rule 93 of the European Prison Rules. In marked contrast, persons suspected of genocide, crimes against humanity or war crimes are entitled under international law to have a lawyer present during any questioning, as reflected in Article 55 of the Rome Statute of the International Criminal Court as well as Rule 42 of the Rules of the International Criminal Tribunal for former Yugoslavia and Rule 42 of the Rules of the International Criminal Tribunal for Rwanda.

Amnesty International is further concerned by the expulsion procedures outlined in the decree. According to the decree, a prefect -- not a judge -- will be able to make expulsions based on *prima facie* evidence. It will then be possible to appeal against the expulsion order to an administrative court (Tribunale amministrativo). Amnesty International would like to remind Italy of the right to competent counsel in accordance with Articles 13 and 14 of the Basic Principles on the Role of Lawyers, as well as the right not to be expelled unless a final decision has been taken by a competent authority as enshrined in Article 13 of the International Covenant on Civil and Political Rights.

Amnesty International would like to remind Italy of its obligations under customary international law to respect the principle of *non-refoulement*, i.e. the prohibition on sending anyone to a country or territory

where that person would be at risk of serious human rights violations. This obligation is reinforced by the fact that Italy is a party to the 1951 Convention on the Status of Refugees, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibit *refoulement*.

Amnesty International urges the Italian government to repeal any provisions that violate internationally recognized human rights law and standards from 1 August “counter-terrorism” decree. Amnesty International further urges the Italian government to ensure that future “counter-terrorist” provisions are in line with internationally recognized human rights laws and standards.